## APPENDIX I.

### Memorandum Findings of Fact and Conclusions of Law of the District Court.

(Filed January 27, 1959.)

These cases were tried together. Osborne Mining Company, Inc., is a Kentucky corporation engaged in the business of strip mining coal. Defendant, United Mine Workers of America, referred to sometimes as International union, is a labor organization—an unincorporated association—having a membership of some 300,000 persons and is international in scope. Some of its members are residents of Tennessee and other residents of various states of the Union as well as residents of Canada. It functions under a written constitution and maintains its headquarters in Washington, D. C. Its officers are a president, vice-president and secretary-treasurer.

Defendant, United Mine Workers of America, District 19, is a chartered provisional district of the United Mine Workers of America. Its jurisdiction includes Whitley, Knox, and Bell Counties, Kentucky, and all mining counties in Tennessee, including Campbell County, Tennessee. During the period of time involved in these suits its officers were a president and secretary-treasurer, each of whom was appointed by the president of the International union with their appointments confirmed by the International Executive Board. District 19 maintains an office in Middlesboro, Kentucky.

Defendant Ed Daniel is a resident of Jellico, Tennessee, and is an organizer for District 19. Defendant Dan Paul is deceased. The suit was dismissed before trial as to defendants Louis Bailey and John Grills, Louis Siler and Pete Bray, both individually and as members of the class.

Defendants Duke Link, Dan Paul, Ike Bowlin, John Link, George Smith, Ed Burress, Louis Siler, Spencer Douglas, Crit Creekmore and Jim Elliott, are residents of Campbell County, Tennessee, and were sued individually and as members of the United Mine Workers of America and United Mine Workers of America, District 19, and were made defendants as a class representing the International union and District 19. The suit was dismissed as to the individual defendants, except as to Daniel, at the conclusion of the evidence.

Osborne Mining Company sues for $2,500,000 compensatory damages, claiming that it developed a profitable coal mining business in Eastern Kentucky and Campbell County, Tennessee, and that the defendants destroyed its business by inducing and encouraging the employees of the truck haulers of its coal and employees of its sublessees who were engaged in underground coal mining operations to quit work for the purpose of forcing Osborne Mining Company to recognize and bargain with the United Mine Workers of America and by unlawful interference with its employees. The union was not certified as a representative of such employees under provisions of 29 U. S. C. A., Section 159.

John Amos, a resident of Williamson County, Tennessee, and Clifford Osborne, a resident of Laurel County, Kentucky, sue to recover $250,000 as compensatory damages claiming that Osborne Mining Company agreed to pay them ten cents royalty for each ton of coal mined on leases to be referred to hereafter in more detail.

Love & Amos Coal Company, a Tennessee corporation, is a coal sales agency of which John Amos is president and principal stockholder. This corporation served as agent for the sale of coal mined by Osborne Mining Company, and received 25 cents per ton commission for each ton mined by Osborne Mining Company and sold by it.

The sales agency agreed with Osborne Mining Company to sell the coal mined by it before selling coal mined by other companies.

Love & Amos Coal Company claims $600,000 compensatory damages on account of the alleged wrongful acts of the defendants in depriving the mining company from mining its coal.

Jurisdiction is based upon the Labor Management Relations Act, 1947, as amended, 29 U. S. C. A., Sections 141, et seq., particularly Sections 187 (A) (1) and (2) and 187 (b) thereof, and also under the common law. The claims of jurisdiction because of diversity of citizenship and the anti-trust laws, have been withdrawn.

Plaintiffs also ask judgment for large sums as punitive damages.

It is the theory of the mining company that it had developed a profitable coal business during the years 1949 through 1953 in the Jellico seam of coal in Kentucky on the Black Star lease and other properties in Eastern Kentucky; that it acquired two leases consisting of approximately 24,000 acres of coal lands known in the record as the Packard and Gatliff leases which involved property closer to Jellico, Tennessee; that these properties were suitable for both strip mining and underground mining; that prior to extension of its business to the area embraced within the two leaseholds, the Osborne Mining Company had operated farther to the north in Whitley County, Kentucky, the loading point of the coal there mined being Faber, Kentucky, and while there the United Mine Workers of America sought to disturb its operations by secondary boycotts and direct attacks; that as a result of these activities an injunction was obtained from the Chancery Court of Whitley County, Kentucky, by Osborne Mining Company and others, enjoining the United Mine Work-

ers from further interference with their operations unless the United Mine Workers of America became the bargaining agency of the employees of the mining company.

Following the injunction the mining company invested additional capital in its business in preparation of the development of the properties covered by the Packard and Gatliff leases. This development started in 1954. Railroad loading facilities at Jellico, roads, bridges and culverts were constructed, so that the coal could be hauled from the pits to Jellico, Tennessee, by trucks and there loaded on railroad cars for transportation to the steam plant of the Tennessee Valley Authority at Kingston, Tennessee.

Love & Amos Coal Company had a contract with the TVA whereby TVA agreed to take the coal produced by Osborne Mining Company from the property covered by the Packard and Gatliff leases. Love & Amos Coal Company also obtained contracts from private utilities in Georgia and Florida whereby the utility companies would purchase large amounts of coal to be mined by the Osborne Mining Company from the properties covered by these two leases as well as other properties as might be mined by the Osborne Mining Company.

The Mining company stripped the coal with its own employees at the outcrop back as far as the depth of the ground above the seam and conditions would permit and the coal remaining was mined by underground mining through leases made to individuals who would mine the coal by their employees.

The coal obtained by strip mining was removed to the railroad loading point by owners of trucks who were independent contractors acting under contract with Osborne Mining Company who were paid so much per ton for the hauling to the railroad station. These trucks were operated either by the owners or by drivers employed by the owners.

The coal mined in the underground mines was purchased by the Osborne Mining Company and was either hauled to the railroad loading point by the owner of the underground mine using his own trucks or by his employees or by individuals who were acting under contract with the underground operators who either drove their own trucks or employed others to drive them.

It is insisted that all of the employees of the truckers and of the sub-lessees were secondary employees within the meaning of the Labor Management Relations Act, 1947, as amended, 29 U. S. C., Section 152, et seq.

It is further insisted that the defendants induced and encouraged these secondary employees to engage in concerted refusals to mine and transport the coal to the railroad loading points for the purpose of coercing the Osborne Mining Company to recognize and bargain with the United Mine Workers of America as the representative of its employees.

Plaintiffs say that the defendants were successful in their efforts and that as a proximate result the Osborne Mining Company was forced to move their operations from the properties covered by the Gatliff and Packard leases to small properties in Eastern Kentucky which were non-profitable in operation, thus in effect destroying Osborne Mining Company's hitherto profitable business.

It is insisted that defendants violated the secondary boycott provisions of the Labor Management Relations Act, 1947, as amended, 29 U. S. C., Section 187 (A). It is insisted that in such violations the defendants engaged in acts of violence that were contemptuous of the law that were calculated to, and did in fact, create a reign of terror in the area where the mining company operated.

Plaintiffs say that as a result of the secondary boycott it was necessary for Love & Amos Coal Company to cancel

its contract with the Tennessee Valley Authority at a cost of $19,000, which was paid by the Osborne Mining Company, in addition to the cancellation of the Gatliff and Packard leases.

Plaintiffs say that they are entitled to damages from the defendants for violation of their common law rights, and that this Court has jurisdiction of the common law count of the complaint under the doctrine of pendent or ancillary jurisdiction, that any damages caused by the defendants that are not attributable to their secondary boycott activities may be compensated under the common law, including punitive damages.

It is the theory of the defendant International union, that this Court did not acquire jurisdiction of it by process on Ed Daniel.

This Court was of the opinion when the motion to dismiss was argued, and is still of the opinion, that service of process on Ed Daniel as the agent of the International was valid process. Admittedly, Ed Daniel was an organizer of District 19 which is merely a provisional district that is not autonomous.

During the time involved in this suit Ed Daniel was engaged in organizational activities for the International in the area where Osborne Mining Company operated. He was subject to the control of the International. Each new member of the union obtained by him enured to the benefit of the International. United Mine Workers of America v. Patton, 4th Circuit, 1954, 211 F. 2d 742, page 746.

The service of process upon the defendant unions was effectual under Section 20-223, Tennessee Code Annotated McDaniel v. Textile Workers Union of America, 36 Tenn. App. 246; UMW of A v. Meadow Creek Coal Co., Inc., 6th Circuit, decided January 21, 1959.

Jurisdiction was also acquired of the defendant unions under the class action device of service of process. Tisa et al. v. Potofsky et al., D. C. S. D. N. Y., 1950, 90 F. Supp. 175; and Ketcher v. Sheet Metal Workers International Association, D. C. E. D. Ark. W. D., 1953, 115 F. Supp. 862.

Defendants say that the Court did not acquire jurisdiction of the common law action for the reason that diversity of citizenship does not exist.

Defendants say further that the Taft-Hartley Act was not violated because: (A) there was no inducement or encouragement to concerted action to either the employees of truck owners hauling coal or of the employees mining or hauling coal for Osborne Mining Company's sub-lessees; (B) there was no violation of the Act in that neither of the classes of the employees were employees of neutral employers; (C) the Act was not violated because the organizational efforts were directed to all employees employed in the scheme of operations of Osborne Mining Company and Love & Amos Coal Company, including employees of the sub-lessees and the employees of the truck owners hauling coal for the Osborne Mining Company and its sub-lessees; (D) the Act was not violated because the controversy was primary rather than secondary; (E) John Amos and Clifford Osborne and Love & Amos Coal Company may not maintain an action under the Act as they are not parties covered by the Act; (F) if any violation of the Act is shown, defendant unions are not responsible therefor in that no person with the authority so to act for these defendants, or either of them, participated therein.

It is denied that District 19 is the agent of the International. It is also denied that District 19 was in any manner authorized by the International to engage or participate in the acts upon which the causes of action are

predicated. Defendant unions disclaim all responsibility for any and all violent or unlawful acts that may have been committed.

Defendants question the extent of plaintiffs' damages on account of the alleged tortious conduct of the defendants.

The cases were tried to the Court without a jury. The trial time consumed three weeks and one day; a record of more than 3600 pages of testimony was made and several hundred pages of exhibits filed. At the conclusion of the trial, the request for ten days additional time in which to file briefs made by the attorneys for the respective parties was granted. The briefs have been filed. These briefs, together with the previous briefs, run into several hundred pages.

The Court now makes specific findings of fact and conclusions of law as provided by Rule 52, Federal Rules of Civil Procedure.

## Findings of Fact.

(1) Taylor Maddox, during the period of time material to these cases, was one of the district representatives of District 19; Ed Daniel being the other district representative. Taylor Maddox resided in Middlesboro, Kentucky.

(2) From 1953 until July 1, 1956, Ray Thomason was president of District 19 but did not function in such office after August 1, 1954 because of serious illness. From 1953 throughout the remainder of the time material to these suits, Albert Pass was the secretary-treasurer of District 19. Both Thomason and Pass resided in Middlesboro, Kentucky during such periods.

(3) Osborne Mining Company, Inc., was organized in the early 1940s. For some years prior to 1950 this cor-

poration was inactive. Prior to 1950 all of its outstanding stock, which consists of 50 shares of common stock, each with par value of $100, was owned by Clifford Osborne.

(4) Beginning in 1947 and continuing through the year 1959, Clifford Osborne engaged in coal strip mining operations near Corbin, Kentucky, on an individual basis. Beginning in 1949 some, or all, of the coal produced by Osborne Mining Company was sold by Love & Amos Coal Company.

(5) Pursuant to an understanding between Clifford Osborne and John Amos, the Osborne Mining Company was reactivated as of January 1, 1950. Osborne turned over to the corporation the equipment which he had been previously using in his strip mining operations and Love & Amos arranged for a loan to the corporation, the proceeds of which were used for the purchase of additional equipment. As a part of the transaction, Osborne transferred to Amos one-half of the outstanding capital stock of the corporation, or 25 shares. Twenty of these shares were distributed by Amos to employees of Love & Amos Coal Company without payment of a cash consideration. No written agreement was entered into between Love & Amos Coal Company and Osborne Mining Company, but it was understood that Love & Amos Coal Company would arrange for the sale of coal produced by Osborne Mining Company and would help finance it and receive for its services the sum of 25 cents per ton on the coal sold by it.

John Amos acted as the general manager of the Osborne Mining Company and directed its affairs. Clifford Osborne directed the work of the corporation in the field. W. B. Stone, secretary-treasurer of Love & Amos Coal Company, served as bookkeeper of Osborne Mining Company from 1950 through the period of time material to these cases, and during part of such time was its vice-president.

(6) From January 1 through June, 1954, Osborne Mining Company engaged in strip mining of coal on lands near Corbin, Kentucky. In 1951 Osborne Mining Company leased for its mining operations a 7500 acre tract of land in the vicinity of Corbin, Kentucky, known as the Black Star tract. The corporation commenced its stripping operations on the Black Star lease in 1953 and continued such operation thereon through June, 1954. It subleased parcels of land that were covered by this lease to various parties who carried out underground operations and sold the coal produced by such operations to Osborne Mining Company.

(7) During the period of its operation from 1950 through 1954, the coal that was produced by Osborne Mining Company and the coal produced by its sub-lessees was trucked to a tipple maintained by the company near Faber, Kentucky, and from there was shipped to consumers by rail. The strip mining was carried on by Osborne Mining Company through its own employees. The small underground operations were carried on by a number of sub-lessees and employees of such sub-lessees. Written leases were made to the sub-lessees and collateral agreements with some, if not all of the sub-lessees, called for the delivery to Osborne Mining Company of all coal mined by them on such leased premises at a price fixed by the collateral agreement.

(8) During the period from 1950 through June, 1954, Osborne Mining Company produced the following quantities of coal:

| | Tons of Coal Recovered by Strip Mining | Tons of Coal Recovered by Underground Mining | Total |
|---|---|---|---|
| 1950 | 69,348 (a) | | 69,348 (a) |
| | (a) This apparently includes both strip mining and underground mining as there was no breakdown available. | | |
| 1951 | 78,782.49 | 31,210.30 | 109,992.79 |
| 1952 | 109,131.09 | 130,006.84 | 239,137.93 |
| 1953 | 132,842.11 | 116,455.30 | 249,297.41 |
| 1954 | 91,895.00 | 35,249.95 | 127,144.95 |
| 1955 | 89,721.38 | 28,194.43 | 117,915.81 |
| 1956* | 71,981.90 | 18,291.25(a)** | 90,273.15 |

* Ten months only.

(a) Includes 2,848.30 tons not shown whether strip or underground

** Because not shown in tons the months of April, May, June, July and August are omitted.

(9) In 1951 and 1952 William Clontz, a district representative of District 19, talked with Clifford Osborne upon various occasions in an effort to get him to sign with the United Mine Workers of America a collective bargaining agreement on behalf of Osborne Mining Company.

In October, 1953, Clontz again contacted Osborne for the same purpose. Subsequently a meeting was held in the office of District 19 in Middlesboro, Kentucky, between Clifford Osborne and Ray Thomason when, according to Osborne's testimony, Thomason got mad and "hollered and screamed and went on something awful, and said a little of everything to me, and told me that I had been a sore eye to them ever since I had been in the coal business, and he didn't intend for me to put my damn dirt on the market" (R. 2012-13).

Thomason's testimony was that the meeting was peaceful and pleasant. He denied that he threatened Osborne.

(10) Subsequent to the Osborne-Thomason 1953 meeting, Osborne made known his decision not to sign a collec-

tive bargaining agreement. Some time thereafter a picket line was established which amounted to a secondary boycott of the truckers who hauled the coal produced by Osborne Mining Company and those who hauled the coal produced by the sub-lessees as the picketing was of such character which prevented the hauling of the coal.

This drastically interfered with the operations of Osborne Mining Company which, along with some of the truck haulers, obtained an injunction enjoining all picketing at the Osborne Mining Company mines on the part of District 19 and certain individuals. Subsequently, in November, 1953, an order was entered dismissing this action at plaintiff's cost.

This order contained a recital to the effect that counsel for District 19 had advised the District that under the laws of the State of Kentucky it was unlawful to picket for the purpose of obtaining a union contract unless the union represented a majority of the employer's employees and that the officials of District 19 wished to obey the law by withdrawing further picketing until such time as it would be legal to picket under the laws of Kentucky.

(11) By lease, dated December 15, 1953, Amos acquired the right to remove coal from a tract of land known as the Packard lands located northeast of Jellico, Tennessee, which consisted of approximately 7,000 acres. The term of the lease was from December 15, 1953, through January 1, 1960, with right to extend the lease for an additional term of six years, and called for the payment of minimum royalty for each calendar year beginning with 1954. Amos was given the right to terminate the lease during the term thereof upon the payment of the sum of $500.00.

The lease contemplated the mining of coal by strip mining and underground mining methods, and called for a base royalty of 25 cents per ton for each ton of coal recovered

by the strip mining method and 20 cents per ton recovered by the underground mining method.

(12) The Packard lease contained a provision permitting the assignment thereof on the written consent of the lessor, and it further provided that the lessee could sub-lease all or a part of the premises subject to the conditions of the lease upon the written consent of the lessors.

No written consent to any assignment or sub-lease was ever executed by the lessors, but the lessors recognized the oral assignment of the lease to Osborne Mining Company as the lessors accepted rent from the Mining Company for a period of some two years without complaint.

(13) By lease, dated March 31, 1954, Amos acquired from the Gatliff Coal Company and others the right to remove coal from a tract of land known as the Gatliff tract located in Whitley and Knox Counties, Kentucky, which adjoined the Packard tract on the east and consisted of some 17,000 acres.

This lease contemplated the mining of coal by both underground and strip mining methods and expressly conferring the right to mine coal from the Blue Gem, Jellico and Vanderpool seams of coal.

The term of the lease was ten years with the right to extend the lease for an additional term of ten years, and called for a royalty of 25 cents per ton for coal recovered by strip mining and 20 cents per ton for coal recovered by the underground mining method. The lease also called for a minimum annual royalty and for the rental of the camp known as Gatliff, Kentucky. A provision in the lease permitted the surrender of the lease by the lessee on the payment of the sum of $2,500.00.

(14) The Gatliff lease recites that Amos contemplated the formation of a corporation to take over the leased

property without the consent of the lessor. The lease further provided that the properties would not be further sublet without the written consent of the lessors.

No written consent to sub-let was ever executed by the lessors, but the lessors recognized Osborne Mining Company as the lessee by accepting rent from the mining company during the life of the lease.

(15) In April, 1954, instruments were prepared for the assignment of the Gatliff and Packard leases from Amos to Osborne and Amos, a partnership. Such assignments expressly provided that they were contingent upon the original lessors granting their written consent thereto.

The written consent of the original lessors were never obtained or was either of the proposed assignments executed by the interested parties.

(16) In April, 1954, written assignments were also prepared for the transfer of the Packard and Gatliff leases from Osborne and Amos, a partnership, to Osborne Mining Company subject to the conditions set forth in the original leases of the Packard and Gatliff tracts to Amos and the provisions of the unexecuted assignments from Amos to the Osborne and Amos partnership.

It is provided in these proposed assignments that Osborne Mining Company would pay all royalties due the original lessors, and in addition thereto a royalty of ten cents per ton on all coal mined from the leased premises to the Osborne and Amos partnership.

These proposed assignments further provided that Osborne Mining Company would have no authority to sublease any interest acquired by it in the leaseholds without the consent of the original lessors, and that any attempt to do so would be void and of no effect and would be operating to cancel the assignments."

These proposed assignments were not executed by either the Osborne and Amos partnership or by the Osborne Mining Company, although the Osborne Mining Company operated the properties as though the written assignments had been executed and the consents to sublease had been obtained by all interested parties.

(17) Osborne operated during the years 1950-1953 at a profit. Its taxable income was as follows:

| | |
|---|---|
| 1950 | $47,351.30 (Exhibit D-2) |
| 1951 | $13,447.69 (Exhibit D-3) |
| 1952 | $21,829.30 (Exhibit D-4) |
| 1953 | $12,037.28 (Exhibit D-5) |

(18) Depletion was taken by Osborne Mining Company during the years 1952 and 1953. The profits were based on depreciation of cost of equipment over a four-year period.

The proof shows that the average life of the equipment, if properly maintained, is ten years. The proof further shows that the equipment was maintained in a good state of repair.

Bonuses were given to various officers and employees in December, 1952, and December, 1953, which were charged as operating expenses, but which the company was not obligated to pay.

If the bonuses and depletion are eliminated, and the equipment schedule is revised so as to take depreciation over a ten-year period rather than a four-year period, the profits of the Osborne Mining Company would amount to:

| | |
|---|---|
| 1950 | $78,729.28 |
| 1951 | $43,262.96 |
| 1952 | $89,276.97 |
| 1953 | $90,867.91 |

(Exhibit P-108, and Sheets 2 to 5 of Exhibit P-109.)

(19) In 1953 Love & Amos Coal Company and Osborne Mining Company became interested in the furnishing of coal from the Osborne operations to Southern power companies as well as the Tennessee Valley Authority steam plant at Kingston, Tennessee. This was one of the reasons for seeking the Gatliff and Packard lands. The negotiations with the TVA started in 1953 and continued until the date of the contract; June 4; 1954.

(20) Amos' and Osborne's investigation of the Packard and Gatliff lands convinced them that they were valuable properties for the supplying of coal. They were convinced that the lands lay in such condition for the coal to be mined economically by strip mining and underground methods. They knew that they contained a large amount of Jellico seam coal which is considered a high quality of coal. The lands included the lower and upper Dean seams of coal as well as the seams heretofore mentioned. They believed that the seams could be mined economically. They estimated the coal reserves on these properties to exceed 50,000,000 tons.

(21) Before any arrangements were definitely made with respect to the TVA contract and the Packard and Gatliff leases, Osborne Mining Company encountered difficulty with the United Mine Workers. Clifford Osborne had been approached at various times in the early operations of the company by the representatives of the United Mine Workers seeking to obtain a contract from Osborne Mining Company recognizing the United Mine Workers as the bargaining representatives of the employees of the company.

(22) Clifford Osborne was pressured on more than one occasion to sign a union contract and the employees of Osborne Mining Company were approached at their homes and other places by the representatives of the union soliciting their membership in the union. These efforts were unsuccessful.

(23) In preparation for work on the Packard and Gatliff properties, Osborne Mining Company constructed a tipple at the Southern Railroad terminal for the weighing of coal in Jellico, Tennessee. The plan was to acquire a larger area north of Jellico where the business expanded and their building a permanent tipple.

(24) On June 4, 1954, Love & Amos Coal Company entered into a contract with the Tennessee Valley Authority. This contract called for delivery of 2500 tons of coal per week in July and August, 1954; 3000 tons per week in September and October; 5000 tons each week in November and December; 5750 tons per week through the months of 1955, and 5000 tons per week during the balance of the contract which expired July 1, 1956. The price to be paid was $3.75 per ton. On September 27, 1955, the tonnage was increased by ten per cent effective November 21, 1955 pursuant to the option given to the TVA in the contract.

(25) Osborne Mining Company expected to carry out supplying coal under the TVA contract from the Packard and Gatliff leaseholds, and the operations on these leaseholds followed the same pattern of the operation by Osborne on the Black Star leasehold, namely, underground independent coal operators sub-leasing portions of the property and supply coal to Osborne Mining Company to apply on Osborne Mining Company contracts and independent truck owners to haul the coal. The underground operators and the truck owners hired their own employees over whom Osborne Mining Company had no control.

(26) In June, 1954, the United Mine Workers, through its official Journal, announced its policy with respect to the practice of the TVA buying coal from non-union operations and criticized severely the TVA for this practice. The constitution of the union required the Journal to be read at the meetings of the local unions. Exhibit P-8, Article XIV, Section 45.

(27) Osborne Mining Company started its operations on its new leaseholds in the early part of July, 1954 on the Packard property in the Buck Creek area. The Blue Gem seam was the first seam of coal worked in that area.

With the exception of this work on the Blue Gem seam, all strip mining conducted by Osborne Mining Company on the Packard and Gatliff leases was on the Jellico seam. From the standpoint of quality and availability for mining, the Jellico seam was the best seam of coal on the Packard and Gatliff properties. Deep mining operations on a rather large scale had been conducted for many decades on the Jellico seam on both the Packard and Gatliff tracts, but such operations had been abandoned long before the execution of the Packard and Gatliff leases.

Soon after operations commenced, some 20 to 30 union men came to the strip pit of Osborne Mining Company, the work situs of practically all of the employees of that company. They asked the various employees to join the union. They told the employees that if they did not join that they would return to the pit and if they did return the situation would not be peaceful.

(28) On the morning of July 23, 1954, a riotous group of men of 50 to 100 went to the premises of Osborne Mining Company at Jellico, Tennessee, where the weighing scales and loading tipple were located and where the trucks unloaded the Osborne Mining Company coal into railroad cars.

Taylor Maddox and Ed Daniel, union organizers of District 19, were present on this occasion. Maddox wanted to explain to Osborne why the men were there. At that time he asked Osborne to sign a union contract. Daniel was back in the crowd.

There was testimony that Maddox stated to Osborne that the union members would take care of themselves and

that the trucks would not dump their coal until Osborne signed the contract.

Maddox denied that he made the statement that there would be no coal dumped until the contract was signed, although he admitted that he asked Osborne to sign the contract on this occasion. He also admitted that he explained to Osborne why the group of men were there.

The unruly group attempted to stop one truck loaded with coal from entering the Osborne Mining Company premises. The next truck entering the premises was driven by Wilford Gwinn, and the group of men attempted to stop this truck by blocking its path and grabbing hold of the truck and finally succeeded in stopping it on the premises near the scale house. One or more of the group jerked the door of the cab of the truck open and made threats to the truck driver.

There is testimony that Daniel not only failed to do anything to calm the men but at one time stated, in substance, that they were in Tennessee and would do as they pleased.

There is testimony that Daniel said, in substance, that someone ought to kick the dress off of Miss Hopkins, bookkeeper of Osborne Mining Company.

Daniel denied having made these statements.

Clifford Osborne asked the group of men to disperse and let the company carry on its operations. He talked for some time with Taylor Maddox but was unsuccessful in getting the group dispersed.

A number of other trucks came into Jellico with coal for the purpose of unloading it at this tipple but could not gain access to the tipple because of the violent attitude of the group of men, and the drivers, including the employee drivers, parked their trucks at various places on the streets and the parking lots while Osborne was

carrying on his conversation and attempting to restore order.

Neither Maddox nor Daniel attempted to persuade the group to disperse in order that the coal could be unloaded. An unsuccessful attempt was made to obtain the help of police.

Mr. Mahan, the company lawyer, appeared and the truck drivers were instructed to take their loads of coal to the company's tipple at Faber, Kentucky. This coal was scheduled to go to the TVA but was shipped from Faber on some other order.

Osborne stated to Maddox on this occasion that he planned to secure an injunction against the activities of the group of men but the attitude displayed by Maddox to this remark was that of disdain.

(29) The following day July 24, 1954, an injunction was obtained against the riotous activities of the group of men by Osborne Mining Company and some of the truck drivers in the state court at Jacksboro, Tennessee, the county seat of the county in which Jellico is situated. This suit was dismissed at plaintiffs' cost on December 19, 1956, which was after the two leases were surrendered.

Approximately a week elapsed before another truckload of coal went into Jellico. On August 2, 1954, trucks of coal entered Jellico, and as they entered they were stopped by groups of men in the streets and when the trucks would stop the drivers were arrested under warrants which charged them with improper equipment or failure to have Tennessee license.

These warrants were served on the drivers and they were arrested by a deputy sheriff, Spencer Douglas, a member of the United Mine Workers. These warrants were issued against the drivers of the trucks who were plaintiffs, along with Osborne Mining Company, in the

injunction suit filed at Jacksboro. Several of the arrested drivers were employee-drivers employed by the independent contractors who owned the trucks, and several of the arrested drivers owned the trucks which they were driving.

The cases against the drivers were dismissed by the General Sessions Court of Campbell County upon the statement of the prosecuting witness on the stand that he was told by someone to swear out a warrant. The circumstances surrounding the swearing out of the warrants indicated that there was no justification therefor. This was a serious abuse of legal processes which was inspired by union activities.

The name of Spencer Douglas, deputy sheriff of Campbell County, appeared frequently in the testimony relating to the circumstances of swearing out of the warrants. There is testimony that he asked witnesses to sign the warrants. He was a defendant in the Jacksboro Chancery Court proceeding. He was a member of the group of men of July 23, 1954.

(30) For a number of months after the foregoing instances and until the winter commenced, crowds of men assembled around the tipple premises of Osborne Mining Company in Jellico interfering with the truck drivers as they came into the tipple.

(31) The foregoing activities on the part of the union members undoubtedly interfered with the plans of Osborne Mining Company to secure a large number of sublessees for underground operations on the new leaseholds.

(32) In the fall of 1954, stripping production reached the rate of production which was experienced in 1953 on the Black Star operation. The underground production was increasing to a point where it reached 6000 tons per

month in November, 1954, and in the same month the stripping operation production exceeded 11,750 tons.

(33) As is customary in winter months, production fell off during the winter months of 1954-55. Osborne Mining Company expected production to pick up in the spring and summer months.

(34) The United Mine Workers was continuing its attempt to organize mines in the area of Jellico, Tennessee, and in the fall of 1954 its organizer, Ed Daniel, sought to obtain a contract from Maiden mine in Newcomb, Tennessee, some four miles from Jellico.

Subsequently, after a picket line had been placed at this pit, on December 16, 1954, Ed Daniel was observed by Joe Kidd driving from Jellico toward the pit. Kidd, a truck driver hauling coal from this pit, returned for another load and the picket line had disappeared except for three men. As Kidd left the pit with his next load, two men in a car tried to stop him, followed him and fired pistol shots into his truck as he passed.

The damage to the tires of the truck was repaired at the State Line Service Station in Jellico, the place where the trucks which hauled the Osborne coal were serviced and kept when not in operation.

The drivers of the Osborne trucks learned of the Maiden mine shooting incident.

(35) In 1954 and 1955 Osborne Mining Company purchased a new stripping shovel and a new bulldozer. The company was negotiating for a larger shovel but the negotiations were terminated when the violence of April, 1955 broke out. It sold its Black Star lease, retaining the rights to the coal from the underground mines.

(36) Beginning in August, 1954 and continuing throughout the remainder of the period of time Osborne Mining

Company operated on the Packard and Gatliff tracts, which period ended in October, 1956, a number of small underground mines were opened on the Jellico seam in the Buck Creek area. These mines were operated on small tracts fronting on what is known as the high wall along the strip outcrop.

Each of these tracts for these underground mines was sub-leased by Osborne Mining Company to one or more individuals on printed forms prepared for Osborne Mining Company for the sub-leasing of small tracts on the Buck Creek area of the Packard lease. During the year 1954, twelve such sub-leases were executed; during the year 1955, nineteen such sub-leases were executed, and during the year 1956, twenty-five such sub-leases were executed.

(37) The sub-leases under which the small underground mines in the Buck Creek area operated called for the payment of 25 cents per ton royalty to the Osborne Mining Company for each ton of coal removed by the sub-lessee.

It was provided therein that the sub-lessee would diligently operate the mine and keep accurate records, comply with applicable laws and hold Osborne Mining Company harmless from all claims.

Osborne Mining Company had the right to terminate the lease immediately upon the failure of the sub-lessee to fulfill his obligation thereunder. Either party could terminate the lease on 30 days' notice.

(38) None of the sub-leases expressly provided for the disposition of the coal mined thereunder. It was the understanding and practice of the sub-lessees that such coal was to be trucked to the Osborne Mining Company loading yard in Jellico.

The Osborne Mining Company paid each sub-lessee $2.90 per ton for all coal delivered at the tipple on the Osborne Jellico loading yard.

(39) As a matter of practice, Osborne Mining Company did not require the payment of the 25 cents per ton royalty stipulated in the sub-leases unless that 25 cents royalty was taken into consideration in the price of $2.90 per ton which Osborne Mining Company paid for the coal.

(40) Some of the sub-leases were made by Osborne Mining Company with two or more individuals who operated the mine themselves with additional employees.

The proof is not clear as to the average amounts earned by the sub-lessees of these small mines. It is reasonably clear, however, that the amounts earned were not much more than living wages and in some instances hardly as much as living wages.

(41) Some of the mines in the Buck Creek area opened into a mine which had been operated for many years on the Packard tract but which had been closed since 1945. Small capital was required for the operation of these mines. The equipment ordinarily used therein consisted of wood or steel rails laid upon wood ties, a mine car and hand operated drills. In one or more of these mines a mule was used to pull the mine car to the surface.

(42) Accurate records are unavailable to determine the average production of these underground mines.

(43) Upon termination of its stripping operations in the Buck Creek area on or about October 1, 1954, the Osborne Mining Company moved its equipment across the mountain to a point near the Packard hollow. It continued its major stripping operations in this area for several months, stripping about the entry-ways and workings of the abandoned Packard mine.

(44) Through December 31, 1954, Osborne Mining Company failed to deliver 25,172.50 tons of coal called for delivery during that period by its TVA contract in addition

to the 5,070 tons delivery of which it had failed to make prior to July 1, 1954 and for which delivery failure it had been excused by the TVA on July 2, 1954.

Osborne Mining Company advised the TVA that its failure to make deliveries in accordance with its contract was due to union activities which greatly hampered its operations. On January 31, 1955, the TVA excused such failure.

During the month of January, 1955 through August, 1955, Osborne Mining Company produced by stripping and small mining operations and shipped the following quantities of coal to the TVA:

| Month | Tons Produced | Tons Shipped TVA |
|---|---|---|
| January | 13,617.55 | 13,087.35 |
| February | 12,654.83 | 12,578.35 |
| March | 14,893.00 | 14,892.95 |
| April | 2,438.05 | 2,438.05 |
| May | 10,542.15 | 10,542.10 |
| June | 11,672.50 | 11,672.50 |
| July | 7,628.70 | 7,628.70 |
| August | 5,434.10 | 5,434.10 |

(45) During the five years from 1950 through 1954, the average coal produced per year by stripping methods by Osborne Mining Company was 95,706.27, and by underground mining methods through sub-lessees was 63,277.96 tons.

(46) In 1954 Osborne Mining Company produced 91,895 tons of coal by strip mining methods, and 35,249.95 tons of coal by underground mining methods through sub-lessees. In 1955 Osborne Mining Company produced 89,711.35 tons of coal by strip mining methods, and 28,208.43 tons by underground mining methods through sub-lessees.

(47) During the months of February and March, 1955, Osborne Mining Company moved certain of its equipment to the Kensee Hollow where it undertook to continue stripping operations. This property is situated two or three miles to the northwest of Jellico and was not embraced in either the Packard or Gatliff leases.

Osborne Mining Company claimed that it moved from the Packard Hollow location on account of the unrest of its employees due to interference by union activities. The operations in Kensee Hollow were apparently not successful and were soon abandoned.

(48) On April 6, 1955, a group of two or three hundred men assembled in Jellico. They stopped the trucks loaded with coal coming into Jellico and dumped the loads of coal in the streets and in the parking lots in the city. They forced one of the employee drivers hauling coal to Osborne Mining Company to dump his truck and this driver was assaulted by one or more members of the riotous group. Another driver hauling Osborne coal was chased on foot through the Osborne tipple and his truck was dumped on a nearby lot by the mob. One or more members of the group forced an elderly driver of a truck to unload in the street by hand although the truck had a mechanical dumping mechanism. Spencer Douglas, who was a member of the group on July 23, 1954, was also in this group.

(49) This group left Jellico and visited Newcomb, Tennessee, four miles southeast of Jellico, and also visited the Boots & Cox mine, operated by a partnership composed of Boots and Cox. Boots, a man 65 years of age, was beaten severely by the mob. Mr. Cox was also beaten and kicked in a violent manner. This mine remained closed for approximately a week and the operators called the organizer, Ed Daniel, who came to the mine office. The operators told Daniel they were ready to sign a contract,

and upon signing the contract the mine re-opened and had no more trouble.

(50) In February or March, 1955, two men went to the strip pit of Frost & Parrish near Newcomb; they demanded that Frost sign a contract. He stated that he would discuss it only with Daniel. The men, one of them was armed, departed and later in the morning Daniel and several others appeared, and Daniel asked Frost if he wanted to sign the contract but Frost refused.

On April 6, the same mob that had visited Jellico and the Boots and Cox mine visited the mine of Frost and Parrish, where one or more members proceeded to attack and assault in a vicious manner both Frost and Parrish. The mob also attacked the employees in the mine, leaving them prostrate in the muddy pool at the bottom of the pit.

(51) Ed Daniel was seen on the Newcomb-Jellico road on the morning of April 6 at the time that the mob was in the Newcomb vicinity; he was seen first parked beside the highway talking to a group of men who pulled in beside him; shortly afterwards he was seen travelling on toward Jellico with a caravan of cars following a few minutes behind him.

Daniel denied his presence there and claimed that he had been to LaFollette to see one Cordell, an employee and mine committeeman of the Rex mine.

Cordell was not employed in the Rex mine until May, 1955, and was at no time a member of the mine committee at that mine.

(52) Groups of men came into Jellico the following day, April 7, 1955. On that date the board of aldermen of Jellico passed a resolution describing the mob activity and requesting the Governor of Tennessee for assistance to cope with the situation.

(53) Following the week end of April 9th and 10th, on April 11th, 1955, a group of men assembled again. These men visited several union mines in Campbell County and forced the mines to close, and on this date the group visited the tipple of the mine of Pennington and Phillips, at Pioneer, Campbell County, Tennessee. This mine was under union contract.

In response to Phillips' inquiry as to the reason for the disturbance, he was told to leave his mine closed until he was advised he could open it again.

Phillips later went to Ed Daniel in Jellico, Tennessee, and asked why the mob had come to his mine since he had a contract with the union. Ed Daniel advised him that since Phillips' employees were not members of the union he could not operate his mine.

Daniel advised Phillips to go to District 19 headquarters at Middlesboro, Kentucky, and talk to Albert Pass, secretary-treasurer of District 19.

Phillips conferred with Pass in Middlesboro and was advised by Pass that if his men would join the union he would not be bothered any more. Daniel and Maddox shortly thereafter signed up the employees and the mine reopened.

(54) The mob visited the Van Huss mine between La-Follette and Jellico, Tennessee, on April 11, 1955, where they violently attacked Van Huss. They buried him under a pile of dirt. They forced his employees to beat him and curse him. His clothes were stripped off and he was whipped and then thrown into a pool of water and doused up and down. One of his employees was treated in the same manner. Lowe, a member of the mob on that occasion, referred to Daniel who some several months previously had tried to get Van Huss to sign a union contract.

(55) On April 13 and 14, 1955, the same group of men returned to Jellico and marched through the streets. They marched through the business establishments of the mayor and aldermen, who maintained businesses in Jellico. This marching followed the passage of the resolution of the board of aldermen. Spencer Douglas and George Smith, union members, were again in this group.

(56) Only three men of the stripping crew of the Osborne Mining Company were working on April 13th. They were uncovering coal on the Packard property although the coal was not being loaded because trucks could not go into Jellico.

On April 13th, Clifford Osborne went from the strip pit toward Jellico over the Cane Gap road. As he came down the south side of Cane Gap he saw a long caravan of cars approaching. He barely had time to turn his car around and go back over the mountain. The cars at the head of the caravan gave chase. They chased Clifford Osborne north back down the Cane Gap road into a hollow where the stripping crew was operating, where they lost him.

The men in this caravan of cars searched the pit of Osborne Mining Company and found no one there because they had gone into the woods.

(57) Pass, Daniel and Maddox made union speeches in Jellico on April 11th. They urged their audience to keep the scab coal out of Jellico. Pass is alleged to have stated to them that if they got in trouble the union would be behind them. This he denied.

Wicks, a union member, was a member of the group that visited the Osborne pit and demonstrated through the Jellico business houses on April 13th.

(58) Osborne Mining Company, not having delivered any coal to the tipple since April 6, 1955, began delivering coal to the tipple on April 27, 1955. Taylor Maddox and

Ed Daniel were on the streets of Jellico on that date. They watched the operations of the Osborne tipple and circulated among groups of union men on the streets of Jellico.

(59) On April 28, 1955, a group of men consisting of several hundred returned to Jellico. They visited the place where the trucks that haul Osborne coal were kept overnight and stood around in groups pointing their fingers and evidencing a belligerent attitude toward the truck drivers who were assembled at the State Line service station.

Ed Daniel was observed talking to a group of men a short distance from this filling station. When Daniel left this group the men in the group got in cars and proceeded to parade several times in their cars in front of the State Line service station where the truck drivers were located. These cars drove back and forth in front of this station in an obvious effort to intimidate the on-looking truck drivers. Maddox was parked in a car near the place where these cars made their turn at the north side of town watching the operation.

Several officers of the state police of Tennessee and Kentucky were present but were unable to cope with the situation.

On this day Spencer Douglas made a speech from a platform to the group reassembled in Jellico. The result was that another delay in the delivery of coal to the Osborne tipple ensued. There was no further attempt to deliver coal until May 11th, 1955.

(60) The foregoing activities were designed and intended to create, and did create, a reign of terror in the Jellico area with a design to induce the closing down of the non-union mines and the concerted stopping of mining and hauling of coal from those operations.

The preponderance of the proof shows that the union organizers, Ed Daniel and Taylor Maddox, closely associated themselves with the groups that created the reign of terror in the Jellico area and conferred with the members of such groups from time to time while they were engaged in activities that prevented the operation of the non-union mines and the hauling of coal therefrom to the Osborne Mining Company tipple in Jellico, Tennessee.

These union activities were successful in getting some employees of the operators to join the union and after so joining no further trouble occurred at these mines. In these instances the union benefitted directly from the organizing activities of Daniel and Maddox.

(61) The group activities and violence engaged in by the various groups in the area created fear in the minds of both the primary and secondary employees, which, together with the warning and threats and acts of violence to some of the employees, caused all of them to stop working for a period of several days. Many of these employees did not return to work although some of them did return to work in May and the following months of 1955.

(62) Groups of men continued to occupy the streets and sidewalks in front of the Osborne tipple during the ensuing months of 1955 until the cold weather of the winter 1955-56. These groups would sometimes form picket lines in front of the tipple, and would on occasions point their fingers, block the driveway, and otherwise display hostility toward the truck drivers. Daniel and Maddox were constantly talking to these groups of men. The picket line referred to Love and Amos and Osborne individually as well as Osborne Mining Company.

(63) During April, 1955 and for months thereafter, there were repeated instances in which large numbers of nails were found on the roads used by the trucks hauling

the Osborne coal and which roads were also used by miners going to the underground mines and the strip pits as they went to and from work. The scattering of nails on the road was inspired by union activities of the International and its members.

(64) The effect of the violence and the constant threat of the eruption of more violence and the other activities obviously hampered to a great extent the delivery of coal to the Osborne tipple, the truck drivers taking special precaution in surveying the streets of Jellico before they brought their coal into Jellico. The Osborne Mining Company was required to maintain guards on the particularly hazardous wooded sections of the road between stripping operations and the tipple. On occasions the truck drivers declined to haul.

(65) The effect of the violence, warnings, threats, and acts of violence to both primary and secondary employees, was great on the coal operation.

Some of the operators had developed new mines and were able to produce coal at the beginning of April, 1953. Some of them were producing coal prior to that time. Practically all of these operations were closed for at least a period of a month. The underground mine on the Black Star lease never again delivered coal to the Osborne tipple. A number of the mines on the Packard property closed permanently and underground miners employed in those mines did not return to the production of coal for delivery to the Osborne Mining Company tipple.

Some of the underground mines on the Packard property re-opened for a period of a month or longer but the production of coal from the underground mines never again amounted to any substantial quantity. Miners planning additional mines on the leases declined to proceed although there was a plentiful supply of manpower in the area.

(66) Through fear created by the mob violence and warnings and threats issued by union members, the United Mine Workers of America was able to obtain the signatures of a number of other operating companies other than Osborne Mining Company in the area to the National Bituminous Coal Wage Agreement the contract entered into by the union with signatory operators all over the country.

Under this contract the United Mine Workers became entitled to a percentage of the initiation dues and monthly dues of the miners employed by such operating companies who signed the agreement, and the contract also required those operators to contribute 40 cents per ton to the United Mine Workers of America Welfare and Retirement Fund, and a similar participation by the United Mine Workers in initiation fees and monthly dues from miners employed by mines which already, before mob activity, had contracts with the union but the employees of which had not theretofore been union members.

By taking advantage of the group activities, threats and warnings, with knowledge thereof, and receiving the benefits aforementioned, the United Mine Workers of America both evidenced the authority of the members of the groups to act on behalf of the union and ratified the conduct of the groups.

(67) In the month of June, 1955, certain members of the groups were put to trial in the State criminal court at Jacksboro, Tennessee. Daniels and Maddox were present at this proceeding as well as other members of the groups who participated in the acts of violence in the Jellico area.

(68) While the expense of the defense in the criminal cases at Jacksboro were paid directly by District 19 of the United Mine Workers, they were in effect paid by the International union. The International advanced $3,000 to

$5,000 per month to District 19 for the payment of deficits in general operating expenses in District 19, including the organizers' salaries, and also paid organizational expenses of District 19, which, in June, 1955, amounted to $10,000.00. In the same month District 19 paid the attorneys who represented the defendant in the criminal cases out of the fund in which the $10,000.00 was deposited. The $10,000.00 was sent by the International to District 19 for organizational expenses.

(69) During and following the April, 1955, violence, numerous members of Osborne Mining Company's stripping crew quit work because of the violence and the fear resulting therefrom. These included Leo Black, Ed Black, R. D. Cardwell, James Tidwell and Monroe Wifford, all strip shovel operators, and who were essential key men in the stripping operations.

(70) The employees of Osborne Mining Company in the stripping crews as well as the truck drivers of independent contractors who hauled the coal received repeated threats and warnings from union members to the effect that if they did not quit mining and hauling coal bodily harm would come to them. These threats and warnings were received repeatedly through the early summer of 1955.

(71) Amos and Osborne became convinced that it was hopeless to try to continue operations at Jellico in the face of the continuing strife, and on April 7, 1955, attempted to cancel the TVA contract under the provisions of the penalty cancellation clause. This cancellation was rejected by the TVA because not timely given under the provisions of the contract.

(72) On July 14, 1955, at approximately 11:00 p. m., while the night shift of the stripping crew was operating, rifle shots began to rain down among the men. The stripping operation was lighted by lights on the shovels. The shots

came from the darkness across a ravine. Approximately 100 rounds of ammunition were fired into the pit. The cabs of the shovels were struck by a number of bullets which came within a few feet of the men operating the shovels. One man was hit by a bullet.

(73) In the following months of the fall of 1955 and in the spring of 1956, there were other efforts to intimidate the truck drivers and the stripping crews. These included the burning of haystacks in close proximity of the property being stripped at night in plain sight of the stripping crew; the shooting at a lone guard at the stripping pits; the displaying of mysterious lights in the woods around the pits and scattering of nails in the road.

(74) The acts of brutality and lawlessness committed on others in the area, the frequent warnings and threats received by the members of the stripping crews, the continued effort to organize Osborne Mining Company, seriously interfered with the mining of coal by the Osborne Mining Company and the hauling of the coal by the coal haulers to the Osborne Mining Company tipple in Jellico.

(75) Following the shooting and the other acts of intimidation, Osborne Mining Company lost a number of additional key employees from its stripping crew who quit because of fear. A few replacements were found but these replacements were not willing to endure the hazards of the operation very well. It became impossible to replace the men in the stripping crews who had quit. The hostility of the union toward the Osborne Mining Company was broadly known throughout the area.

(76) In the late summer and fall of 1955 the stripping production of Osborne Mining Company suffered a drastic decline because of the loss of skilled operators and because of the shortage of truck drivers.

(77) The underground production continued to constitute only an insignificant tonnage during the latter part of 1955 and until Osborne's operations on these properties ceased.

(78) On September 3, 1955, because of the hopelessness of the prospects of filling the TVA coal contract, the Osborne Mining Company gave notice through Bove & Amos Coal Company of the termination of the TVA contract, such termination to become effective March 6, 1956, under the terms of the contract.

(79) The officials of Osborne Mining Company attempted to hold on to the leases and continue stripping operations for a number of months thereafter.

(80) Osborne Mining Company throughout its entire period was moving its operations away from the Jellico area, except when it moved on the Kensee property, and closer to the town of Gatliff, Kentucky, a town near the northern border of the Gatliff property, this being a community friendly to Osborne Mining Company employees.

It was felt by the company officials that this location offered better protection than the wooded uninhabited area which lay closer to Jellico, Tennessee, and there was less likelihood of a repetition of an armed assault on the stripping crew.

By January, 1956, the remaining operations of the Osborne Mining Company stripping crew were carried on in the immediate vicinity of Gatliff, Kentucky. By this time the equipment was being operated only a relatively small portion of the total working time available because of the shortage of competent personnel.

(81) Coal produced by the stripping crew in 1956 was shipped from a tipple at Gatliff, Kentucky, on the L. & N. Railroad. This coal was supplied on contracts with con-

sumers other than TVA. The cost of shipping coal from Gatliff, Kentucky, to the Kingston Steam Plant of the TVA was 47 cents per ton higher than shipments from Jellico, Tennessee. Also, the TVA contract called for delivery on cars at Jellico, Tennessee.

In an effort to meet the delinquent deliveries on the TVA contract, the officials of Love & Amos and Osborne Mining Company proposed to the TVA that coal be loaded at Gatliff and shipped to Kingston via the L. & N. Railroad with the increased freight cost to be shared equally by the TVA and Osborne Mining Company, but the TVA declined this proposal.

(82) Osborne Mining Company endeavored to fill other and new contracts during 1956. A contract for 12,500 tons was entered into with Georgia Power Company in January, 1956, and a contract for 75,000 tons was entered into with Georgia Power Company in March, 1956.

Neither of these contracts could be entirely filled by Osborne Mining Company and Love & Amos Coal Company transferred these two contracts to an affiliated coal sales agency and a large part of these contracts was filled by coal supplied by another operator.

(83) Other new contracts were not sought by Osborne Mining Company. A substantial long-term contract with Georgia Power Company to be filled with Osborne coal was declined because of the belief of the officials that the continuing fear and threat of violence in the area would make it impossible to rebuild the operation and fulfill the contract.

(84) In the months of April, May and June, 1956, declines in the production were showing increasing losses on the part of Osborne Mining Company. The stripping crew was greatly depleted and replacements of personnel were

difficult if not impossible to obtain. The fear that prevailed in the area continued.

(85) The union continued in its effort to either organize the Osborne Mining Company or to prevent it from operating its leaseholds.

The preponderance of the evidence shows that Daniel and Maddox in the fall of 1955 had expressed their intent to keep after the company, and that Pass, the district treasurer, in January, 1956, had declared that the union had driven Osborne Mining Company from Jellico and would also drive it from Gatliff and had asked for assistance in getting a list of the names of the company's employees. Maddox continued to watch the Gatliff tipple of the company.

(86) In June, 1956, the officials of Osborne Mining Company definitely decided to abandon the leases and to move to another area where the dread and fear would be removed and the crew could be rebuilt and the equipment of the company could be used to a more profitable advantage.

Stripping operations ceased on the new leaseholds in July because of the losses being suffered. Sums were paid to the landowners in liquidation of the lease obligations.

(87) Osborne Mining Company had prospected some of the virgin seams of coal on the Packard lease early in the year 1956, but its employees would not move from the vicinity of Gatliff, Kentucky, to these prospective areas which lay in the wooded area near Jellico.

(88) Prospecting for coal was carried on in other areas by Osborne Mining Company, one of which was on the Black Star property adjacent to the old Black Star lease.

The Osborne Mining Company had been solicited by the Black Star Coal Company to return to this lease, but when

thy mining company's officials were ready to sign a new lease with Black Star, the latter declined to enter into the lease, the asserted reason being that the contract which Black Star Coal Company had with the United Mine Workers, as interpreted by the parties, prohibited Black Star Coal Company leasing any of its land to a non-union operation.

This is a standard clause in the Bituminous Coal Wage Agreement of the United Mine Workers which is entered into by all signatory coal operators. It was this clause so applied by the union which barred the return of Osborne Mining Company to the Black Star properties.

(89) Osborne Mining Company finally moved its operations in the latter part of 1956 to the vicinity of Graves, Kentucky, and then to London, Kentucky, where operations were continued on a series of small leases.

(90) Osborne Mining Company since the latter part of 1956 has continued to operate in the vicinity of London, Kentucky, on small leases. Its operations have been at a loss. The land upon which it has operated has been the best available coal lands obtainable by the company where the crew could be built to operational size. However, the coal seam on these lands averages 14 to 18 inches in thickness. The equipment must be repeatedly moved from one small lease to another. Underground mining and subleasing for underground mining on these premises is not possible. The operation on these lands is not being carried on at a profitable figure. The company has suffered a loss in both of the years operated, namely, 1957 and 1958.

(91) Subsequent to a surrender of the leases the G & R Coal Company, a non-related organization, commenced and has continued to the present both underground and stripping operations similar to those of the Osborne Mining Company on the Packard property.

This company operates under a labor contract with the defendant union and the union has thus reaped substantial benefit from having caused the Osborne Mining Company to surrender the leases. By knowingly accepting these benefits the union has evidenced its approval and ratification of the means used to achieve the end.

(92) On July 7, 1956, the TVA sued the Love & Amos Coal Company for damages for failure to deliver as required by the TVA contract. This suit was settled by the payment to TVA of $10,000.00 by the Osborne Mining Company.

(93) By purchase order dated December 23, 1957, the Tampa Electric Company ordered from the Love & Amos Coal Company for its Gannon Station tonnages of coal at the following rate:

| | |
|---|---|
| Year 1958 | 350,000 tons |
| Year 1959 | 700,000 tons |
| Year 1960 | 700,000 tons |
| Year 1961 | 1,000,000 tons |

The order was contingent on a freight rate not to exceed $4.65 per ton, price $4.15 per ton, cancellable on 12 months notice by supplier or purchaser, and "In the event West Kentucky Coal Company should begin to perform under our original contract with Nashville Coal Company this agreement will terminate forthwith."

The coal was to have a minimum heat value equal to the Osborne mine coal. The above tonnages were to increase to about 2,500,000 tons per year (Plaintiffs' Exhibit P-37).

This was the type of business that was contemplated by Love & Amos Coal Company and Osborne Mining Company at the time the Osborne Mining Company obtained its two new leaseholds.

(94) The various groups in creating the reign of terror in the Jellico area, and in threatening and committing acts of lawlessness and violence against the secondary employees and others in the area, were furthering the organizational efforts and interests of the defendant International union.

(95) The union organizers Daniel and Maddox were direct employees of District 19 of the International, but were in fact and in law the representatives of the United Mine Workers of America.

Their work included work in the organizational interests and objectives of the International and they were so instructed. In accomplishing these objectives, union organizers frequently resorted to the use of moving groups of men in automobiles.

(96) Daniel and Maddox in their organizational activities worked with the groups of men who created a reign of terror in the Jellico area. In so acting they were furthering the interests and objectives of the International and the International is bound thereby.

(97) District 19 is not a separate autonomous body from the International but is a mere division of the International. Since prior to 1936 District 19 has been a provisional district. Such status is authorized under the constitution of the International, Article III, Section 2. It authorizes the International officers to revoke a district charter and to give such district a provisional status. Under such status principal officers of the district are appointed and paid by the International and this has been done in District 19 continuously since 1936.

The reason for relegating District 19 and other districts to a provisional status was to increase and strengthen the International by giving it more effective control over the officers and organizers of such districts.

District 19 has no by-laws or other rules of self government, it holds no conventions or no general meetings with members or other delegations, it has no elections, it is governed by the officers appointed by the International. District 19 is not self-supporting but receives financial help from the International.

While some funds received from the International are called loans throughout the period of time involved in these cases, such advancement of funds occurred practically each month. No security was furnished for such loans; no assurance or likelihood of repayment in fact existed; the ordinary debtor-creditor situation did not exist, but the advancements were made in order to maintain the district as an effective agency in carrying out the work and objectives of the International.

In addition, during the period involved in these cases, the International made outright grants from its funds to District 19 for organizational purposes, including the following amounts on the dates indicated:

| | | |
|---|---|---|
| $ 4,000.00 | August | 4, 1954 |
| $10,000.00 | June | 28, 1955 |
| $ 1,000.00 | October | 6, 1955 |
| $ 1,500.00 | October | 17, 1955 |
| $13,500.00 | October | 17, 1955 |
| $ 6,000.00 | November | 10, 1955 |
| $10,000.00 | August | 1, 1956 |

(98) The acts of District 19 and its representatives in organizing work are the acts of the defendant International.

(99) The International during the period involved carried on an intensive and integrated organizing campaign especially in southern districts and in the bituminous coal fields. Its own official reports referred to the campaign as that of the International and the International officers

have considered it of foremost importance. Special assessments of the entire membership were levied for the sustaining of the organizing campaign.

(100) The International directly and specifically encouraged and promoted organizing efforts of its district representatives and members in District 19 which resulted in injury to the Osborne Mining Company. It did this through financial contributions and through publications in the United Mine Workers Journal, and distribution thereof to its members of a speech of its president, John L. Lewis, and of his testimony before the Secretary of Labor, in both of which he expressed hostility toward all operations supplying non-union coal to the TVA.

(101) The union organizers and members of the groups and those who issued the warnings and threats and who committed the acts of violence and intimidation to the secondary employees, were not asking the secondary employer or secondary employees to join the union or sign a union contract, but were insisting simply that the secondary employers and secondary employees stop mining and hauling coal for the Osborne Mining Company tipple. Osborne Mining Company had only two employees at the Jellico tipple property.

(102) The principal situs of the dispute was not at the Jellico tipple but at the stripping pits several miles away where the numerous employees sought to be organized were actually engaged in work. This was the logical place for primary picketing and the only place of common activity frequented by all the employees save the two at the tipple.

(103) The logical situs of the work of the secondary employee truck drivers was at the tipple, which was the only point of activity common to all such drivers and their principal occupation was hauling coal to that tipple.

(104) Picketing and other activities at and in the immediate vicinity of the tipple, the parking lots, the State Line service station, were not conducted so as to minimize their impact on secondary employee truck drivers or on secondary employees of the underground mine, rather they were conducted so as to cause the maximum impact.

(105) If the tipple be considered a primary situs of the dispute, activities addressed to secondary employees were not reasonably confined to the premises or to the entrance thereto, but were spread out in neighboring streets and on parking lots in Jellico and on highways leading from the mine pits to the Jellico tipple.

The members of the crowds engaged in picketing moved on many occasions several blocks to the vicinity of the service station used by secondary truck drivers for storage and maintenance of their equipment and having no reasonable relationship to the situs of any dispute.

(106) The men participating in the picketing and other activities did not continuously remain in the immediate area of the tipple driveway, but would scatter and reappear as truck drivers approached with coal thus evidencing their attention to secondary employees rather than primary employees.

(107) Osborne Mining Company was not engaged in the business of underground mining of coal or the business of transporting of coal by truck, but throughout its active existence it has been engaged exclusively in strip mining and has caused its coal to be hauled by independent contractors and has bought underground coal from independent contractors.

(108) Osborne Mining Company did not control the secondary employer truck owners or their drivers, nor did it control the underground mine operators or their em-

ployee miners. There was no common ownership between Osborne Mining Company and the various independent contractor truck owners and sub-lessee mine operators.

The secondary employees were not concerned with any dispute between Osborne Mining Company and the defendants, nor were the defendants concerned with the secondary employees other than as a means of forcing Osborne Mining Company to yield to their demands.

(109) The acts of violence and intimidation were intended to, and did, create a reign of terror in the Jellico area in order to promote the International's organizing coupaign. Said acts and resulting reign of terror were intended to, and did, induce and encourage the employees of employers working for persons other than Osborne Mining Company both in mining and hauling of coal to the Osborne tipple to engage in a concerted refusal in the cause of their employment to mine and haul coal to said company and the objective thereof was to force Osborne Mining Company to bargain with the defendant International as the representative of its employees without said International having been certified as the bargaining representative of said employees.

(110) Osborne Mining Company suffered substantial injuries as a result of said inducement and encouragement, but that part of their total injuries suffered caused by said inducement and encouragement cannot be separated from that part of the total injuries caused by primary acts of the defendants directly against Osborne Mining Company's own officials and employees.

(111) In any event, with respect to the cause of action for violation of 29 U. S. C. A. 187, inasmuch as the defendants' conduct was willful and intended to cause the total injuries which did result to Osborne Mining Com-

pany, the defendants cannot rely upon the said primary activities as an intervening cause in any way relieving them from responsibility for the total injuries suffered by plaintiffs, since the interference with the businesses was the planned and natural consequence of the defendants' wrongful acts in violation of the aforesaid statute as well as the wrongful acts in violation of the common law.

(112) The said secondary activities of the defendants tending to induce or persuade the secondary employees as aforesaid, had an effect far beyond those secondary employees immediately involved. The activities in July and August, 1954, drastically slowing down the buildup of the underground production; the dumping of trucks and beating of drivers; the acts of intimidation at the State Line service station, and visits to the homes of secondary employees in the light of the pattern of terror throughout the area, naturally resulted in inducing of persons to stop their mining and hauling of coal to the Osborne tipple for numerous days and the underground production was substantially and permanently impaired, and the production of strip coal was permanently impaired by the quitting of the truck drivers' employees.

Also because of the aforesaid activities and the fear resulting therefrom many members of the stripping crews of Osborne Mining Company quit the company thus seriously impairing its ability to produce strip coal. All of this resulting damage was effectively accomplished before the shootings in the strip pits, a primary activity.

(113) Osborne Mining Company was an established business at and before the period of time involved in these suits. Its past record showed that it was capable of making profits. Its net profit for income tax purposes from 1950 through 1953, or for a four-year period, averaged $23,666.39 per year.

Net income excluding depletion deduction for the four-year period 1950-53, averaged $36,290.45 per year, and net income excluding depletion deduction with ten-year (rather than four-year) depreciation averaged $62,056.89 per year during this same period, and net income excluding depletion deduction with ten-year depreciation and excluding bonus payments for the same year averaged $75,519.39 per year, and as heretofore stated, net income for income tax purposes averaged $23,666.39 per year.

(114) Osborne Mining Company, as before shown, was required to pay $10,000.00 for failing to fulfill the TVA contract; $2,500.00 was paid to Gatliff Coal Company, $500.00 paid to the Packard land owners for the cancellation of the two leaseholds; $15,000.00 minimum royalty was paid to Gatliff Coal Company for 1955, and $12,413.60 was paid to that company as minimum royalty for 1956.

Osborne Mining Company suffered an operating loss for the year 1955 in the amount of $9,454.03; for the year 1956, the sum of $39,965.52; for the year 1957, $14,234.09, and for the first nine months of the year 1958 an operating loss of $5,657.87.

(115) Osborne Mining Company is presently selling its output for prices higher than it realized during the years 1952 and 1953. The price per ton has been as follows:

| | | | |
|---|---|---|---|
| 1952 | $3.501 | 1955 | $3.561 |
| 1953 | $3.511 | 1956 | $3.678 |

(Plaintiffs say that 1954 is not a representative year to determine profits because they lost considerable time of production work in moving from Black Star property to Gatliff and Packard properties.)

If it had been able to ship on the Georgia Power contract in 1957, it would have received $3.68 per ton. As-

of the time of trial, November, 1958, it would have received $3.90 per ton for all tonnage shipped on the Tampa Electric Company contract, and had it been produced Osborne Mining Company could have shipped up to 350,000 tons on that contract during the year 1958. In 1959 at this same price on that contract it could have shipped, if produced, 700,000 tons, and thereafter on that same contract it could ship, if produced, 700,000 tons and above.

(116) The preponderance of the evidence shows that mining conditions on the Packard and Gatliff tracts were as favorable for profitable operations as those on properties mined by Osborne in 1950-53, and there is substantial evidence that the coal reserves on said properties are approximately 50,000,000 tons.

(117) The prospects were that the working force of employees which Osborne Mining Company had built up over a period of years could have been maintained substantially intact and others could have been added for the usual turnover in employees, and still others added to increase the over-all force, had there been no interference by the union in 1954 and thereafter.

(118) The Osborne Mining Company had newer and better equipment while on the Packard and Gatliff property than it had in 1950 through 1953, and had the financial ability to add and would have added more and larger equipment had there been no interference.

(119) The preponderance of the testimony showed that the operating costs would not have increased as much per ton since 1953 as has the sales price of the coal produced. If the operating conditions on the two leaseholds had not been interfered with by union activities, Osborne Mining Company's profit per ton should have been as much as the profit per ton in 1950 through 1953.

(120) The principal revenues of the International union are dues of its members of $4.25 per month, $1.25 of which is remitted to the local union; $1.00 to the district, and $2.00 to the International.

There is an initiation fee of $50.00, $20.00 of which is retained by the local and $30.00 remitted to the International.

On July 1, 1956, the International possessed cash and securities of $24,601,409.24. (Exhibit P-21.)

(121) In 1954 the International and some of its members in Kentucky and Tennessee conspired to force Osborne Mining Company to recognize the union as the exclusive bargaining agency or to cease its operations on the Gatliff and Packard leaseholds, and to accomplish that objective the International and its members wrongfully interfered with the mining company's operations by continual harrassment of its employees, the employees of its sub-lessees and all parties who hauled its coal or that of its sub-lessees from the mines to the tipples. Acts of violence and threats of violence, created fear in the area where Osborne Mining Company operated which caused many of its key employees to discontinue work as well as the employees of its sub-lessees and the truck haulers who hauled its coal.

(122) Plaintiff Osborne Mining Company has suffered compensatory damages in the amount of $165,000.00 as a proximate result of the wrongful interference by the defendant International with its operations.

The wrongful interference consisted in the main of threats, intimidation, acts of violence, the creation of a reign of terror and other acts which have heretofore been found to be both primary and secondary in nature and

in violation of Title 29, U. S. C. A., Section 187, and in violation of the common law of Tennessee.

(123) Amos & Love Coal Company has suffered compensatory damages in the amount of $35,000.00 as a direct and proximate result of the wrongful acts of the defendant International set forth in Finding 122.

(124) Osborne and Amos, doing business as a partnership, are not entitled to recover from the defendants the claimed 10 cents per ton as an over-riding royalty for each ton of coal mined on the leaseholds by Osborne Mining Company and its sub-lessees, for the reason that any rights or benefits under the claimed contract were waived by them. Payments were not made to them by the Osborne Mining Company and they did not assert any lien against its property to insure such payment. The mining company did not list as an obligation this item in its income tax returns.

## Conclusions of Law.

(1) The Court has jurisdiction under the Labor Management Relations Act of 1947, as amended, 29 U. S. C. A., Section 141, et seq., particularly 187 (A) (1) and 187 (B). The substantial cause of action asserted in the complaint under the federal law and established by the evidence, gives the Court jurisdiction of the common law cause of action.

(2) The service of process in these suits is good and sufficient process upon the defendant International union.

(3) The organizers, Ed Daniel and Taylor Maddox, and Albert Pass, secretary-treasurer of District 19, were agents of the defendant International acting within the scope of their employment and in accordance with customs and

practices within the union and the defendant International is responsible for their acts. Patton v. UMW, 211 F. 2d 742; Clayeraft v. UMW, 204 F. 2d 601; UMW of A v. Meadow Creek Coal Co., Inc., 6th Circuit, decided January 21, 1959.

(4) The purpose of the union in their activities in the Jellico area during the periods of time material to these suits, was to induce or encourage the secondary employees of the truck haulers, coal-mining employees of sub-lessees of Osborne Mining Company, to engage in a concerted refusal to work in order to force Osborne Mining Company to sign a union contract or to force it to discontinue its operations on the Packard and Gatliff leaseholds. Schauffler v. United Association of Journeymen, 3rd Circuit, 230 F. 2d 572; NLRB v. Denver Building and Construction Trade Council, 10th Circuit, 193 F. 2d 421; International Brotherhood of Teamsters, Local 657, 115 NLRB, No. 155 NLRB Decisions, 8811 Paragraph 53,710; NLRB v. Wine, Liquor and Distillery Workers, 178 F. 2d 584; NLRB v. Denver Building and Construction Trade Council, 341 U. S. 675.

(5) The principal activities of the union in Jellico were secondary activities as distinguished from primary activities. NLRB v. International Rice Milling Co., 341 U. S. 665, may be differentiated from the cases under consideration. See NLRB v. Denver Building and Construction Trade Council, 341 U. S. 675; International Brotherhood of Electrical Workers v. NLRB, 341 U. S. 695, and Retail Fruit and Vegetable Clerks Union v. NLRB, 9th Circuit, 249 F. 2d 591.

(6) The truck owners and sub-lessee mine operators who employed the secondary employees were neutral employers and not allies. The truck haulers and sub-lessees were independent contractors and inducement or encour-

agement for concerted action against their employees was a secondary boycott. See 29 U. S. C. A., Section 152 (3), for definition of the term "employee" which provides that an employee shall not include independent contractors. See House Report on Education and Labor to 80th Congress, 1st Session, which deals with independent contractors. House Reports, 80th Congress, 1st Session, Miscellaneous, Vol. 2, p. 18.

Prior to the amendment the National Labor Relations Board had held that truck haulers who hauled coal exclusively for one employer was considered an employee of that employer. See Matter of A. N. Green, 49 NLRB 146. Since the amendment the Board has held uniformly that persons who own trucks who haul exclusively for one employer but who hire and fire their own employees are considered independent contractors, thus their employees are considered secondary employees under the Taft Hartley Act. Robert F. Dwyer et al., dba Clackama Logging Co., and Guy Keller, Frell C. Zink, an individual, Local 5-40, International Woodworkers of America, CIO, 113 NLRB No. 27, Case No. 36-RD-81, 7-21-55 (this case involved a truck hauler of logs); Roy O. Martin Lumber Co., Inc., International Woodworkers of America, CIO, 83 NLRB No. 107, Case No. 15-RC-79, 5-18-49; and Local No. 20, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL, CIO), et al., and National Cement Products Co. of Toledo, Ohio, 115 NLRB No. 206, Case No. 8-CC-37, 5-10-56 (this case involved a truck hauler of blocks).

(7) International and District 19 of the United Mine Workers of America are responsible for the activities which damaged Osborne Mining Company. 29 U. S. C. A., Sections 185 and 187. International L. & W. Union v. Hawaiian Pineapple Co., 226 F. 2d 875; UMWA v. Patton, 4th Circuit, 211 F. 2d 742; Clayeraft Co. v. UMWA, 6th

Circuit, 204 F. 2d 600; United Brotherhood of Carpenters and Joiners of America v. U. S., 330 U. S. 395, and UMW of A v. Meadow Creek Coal Co., Inc., supra.

(8) Osborne Mining Company is entitled to recover substantial compensatory damages for injury to its business because of the secondary boycott activity of the union and because of wrongful interference with its business. 29 U. S. C. A. 187 (B); UMWA v. Patton, supra; Donelly v. Jackson Brothers, 2 Tenn. CCA (Higgins) 408; Hagan v. Trust Co., 124 Tenn. 93; Summers & Lewis v. Sanderson, 7 Tenn. App. 624; Jennings v. Lamb (Tenn. Supreme Court, Dec. 6, 1956), 296 S. W. 828; 15 Am. Juris., pages 571 and 573, Damages, Sections 155 and 157, and UMW of A v. Meadow Creek Coal Co., Inc., supra.

(9) The International is responsible for the acts of its agents and representatives under the common law principles of principal and agent and master and servant. Brumley v. Chattanooga Speedway & Motordrome Co., 138 Tenn. 534; United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656, and UMW of A v. Meadow Creek Coal Co., Inc., supra; UMWA v. Patton, supra.

(10) Love & Amos Coal Company are entitled to compensatory damages sustained as a proximate and direct result of the wrongful acts of the defendants. 29 U. S. C. A. 187 (B); 15 Am. Jur., page 473, Damages, Section 67; United Brick & Clay Workers v. Deena Artware, 6th Circuit, 198 F. 2d 637; Hagan v. Trust Co., supra; City of Atlanta v. Chattanooga Foundry & Pipe Works et al., 6th Circuit, 127 F. 2d 23, affirmed in Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U. S. 390.

(11) Osborne Mining Company has shown to a certainty that it sustained damages by reason of the wrongful acts of the defendants, and the fact that the amount of damages cannot be ascertained with certainty does not pre-

clude recovery. Story Parchment Co. v. Patterson Parchment Paper Co. et al., 282 U. S. 555, 563.

(12) Profits from a business that is contemplated are not allowable, but profits may be allowable from an established business if they are proved with reasonable certainty. Baumer v. Franklin Distilling Co., 6th Circuit, 135 F. 2d 384.

(13) The material facts which support the Osborne Mining Company's secondary boycott action under 29 U. S. C. A. 187, also support its action under the common law.

The secondary boycott claim and the common law claim based on the unlawful conspiracy are not separate causes of action but are simply different grounds to support a single cause of action, the cause of action accrues by reason of International's violation of the mining company's right to be free from wrongful interference in its business.

The Court has jurisdiction of the secondary boycott claim based on the federal law and also the claim of unlawful conspiracy to injure the Osborne Mining Company's business under the doctrine of Hurn v. Oursler, 289 U. S. 238; UMW of A v. Meadow Creek Coal Co., Inc., supra, and United Construction Workers v. Laburnum Construction Corp., supra.

(14) By reason of the wanton and wiliful conduct of the defendants in defiance of law and order, and their willful and intentional unlawful interference with Osborne Mining Company's business, the Court is of the opinion that the Osborne Mining Company is entitled to recover, in addition to compensatory damages, punitive damages in the amount of $50,000.00. See International Union, United Automobile, Aircraft and Agricultural Implement Workers of America et al. v. Russell, 356 U. S. 634, pages 640 and 641, and UMW of A v. Meadow Creek Coal Co., Inc., supra.

Present order in conformity with these findings and conclusions.

In the United States District Court
for the Eastern District of Tennessee,
Northern Division.

Osborne Mining Company, Inc., et al.,

versus

United Mine Workers of America et al.

} Civil Action No. 3166.

## Final Judgment of District Court.

The above entitled cause, together with cause Number 3167, Love & Amos Coal Company v. United Mine Workers of America et al. came on for trial before the Court, sitting without a jury, and the Court having heard all of the evidence, the argument of counsel and having fully considered the same, together with the briefs submitted by the respective parties, has filed its Findings of Fact and Conclusions of Law and based upon such Findings of Fact and Conclusions of Law doth adjudge and decree that the plaintiff, Osborne Mining Company, Inc., is entitled to have and recover of the defendants, United Mine Workers of America and United Mine Workers of America, District 19, compensatory damages in the sum of One Hundred Sixty-Five Thousand Dollars ($165,000.00) and also to have and recover of said defendants, United Mine Workers of America and United Mine Workers of America, District 19, punitive damages in the additional amount of Fifty Thousand Dollars ($50,000.00), together with interest on both amounts from and after the date of entry of the judgment. As to the claims of the plaintiffs, John H. Amos and Clifford J. Osborne, the suit is dismissed and

judgment is rendered as to such claims in favor of the defendants.

Confirming the Court's ruling during the course of trial, the cause is dismissed as to the individual defendants, Dude Link, Dan Paul, Ike Bowlin, John Link, George Smith, Ed Burress, Louis Siler, Spencer Douglas, Crit Creekmore and Jim Elliott, without prejudice to the service of binding and effective process on the defendant, United Mine Workers of America and the defendant, United Mine Workers of America, District 19, by process having been served on any of said individual defendants as representatives of a class consisting of all Members of the defendant union.

It is, accordingly, Ordered, Adjudged and Decreed that the plaintiff, Osborne Mining Company, Inc., have and recover of the defendants, United Mine Workers of America and United Mine Workers of America, District 19, the aforesaid total sum of Two Hundred Fifteen Thousand Dollars ($215,000.00), together with all the costs of the cause, for all of which execution will issue if necessary.

## APPENDIX II.

## OPINION OF COURT OF APPEALS.

Nos. 13,872, 13,871, 13,874 and 13,873.

United States Court of Appeals
for the Sixth Circuit.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
*Appellants,*

vs.

OSBORNE MINING COMPANY, INC.,
*Appellee.*

OSBORNE MINING COMPANY, INC.,
*Appellant,*

vs.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
*Appellees.*

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
*Appellants,*

vs.

LOVE AND AMOS COAL COMPANY,
*Appellee.*

LOVE AND AMOS COAL COMPANY,
*Appellant,*

vs.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19, *Appellees.*

APPEAL from the United States District Court for the Eastern District of Tennessee, Northern Division.

Decided June 7, 1960.

Before: WEICK, Circuit Judge, THORNTON and KENT, District Judges.

WEICK, Circuit Judge. In the District Court Osborne Mining Company, Inc., a Kentucky corporation, sought to

recover compensatory and punitive damages from the United Mine Workers of America and United Mine Workers of America, District No. 19[2] alleging that the defendants induced and encouraged employees of neutral employers to engage in a concerted refusal in the course of their employment to mine and transport coal, for the purpose of forcing Osborne Mining Company to recognize and bargain with United Mine Workers of America as the representative of its employees; that U. M. W. had not been certified as the representative of Osborne's employees under the provisions of Title 29, U. S. C. A., § 159; that said Unions unlawfully interferred with its business of strip mining coal and purchasing coal from others for sale. It claimed that the conduct of the Unions was wilful and malicious and constituted a violation of Section 303 of the Labor Management Relations Act, 1947, 29 U. S. C. A., 187 (a) (1) and (2) and § 187 (b) and also a violation of the common law of the State of Tennessee.

Love & Amos Coal Company was a Tennessee corporation engaged as a coal sales agency. It sold Osborne's coal on a commission basis of twenty-five cents a ton. It filed a separate action against the defendants to recover compensatory and punitive damages for interference with its coal selling business in consequence of the alleged wrongful acts of said defendants as aforesaid which violated the Labor Management Relations Act and the common law of Tennessee.

The two actions were tried together by the District Judge without a jury. The trial lasted over three weeks. The transcript of testimony comprises about 3600 pages and several hundred pages of exhibits. The Court adopted 124 Findings of Fact and 14 Conclusions of Law and found for Osborne Mining Company rendering a judgment in its

[2] The Unions will be referred to herein either as defendants, U. M. W. or District No. 19. Osborne Mining Company, Inc. will be referred to as plaintiff or Osborne and Love & Amos Coal Company as Love & Amos.

favor for $165,000 compensatory damages and $50,000 punitive damages. The Court also found in favor of Love & Amos and rendered judgment for compensatory damages in the amount of $35,000.

The defendants have appealed from both judgments in Case Nos. 13,872 and 13,874. Osborne and Love & Amos have filed separate appeals in Case Nos. 13,871 and 13,873 claiming that the amounts of the judgments in their favor were inadequate.

We will first take up the appeals in Case Nos. 13,872 and 13,871 relating to the Osborne judgment. Many questions, chiefly factual, are presented by defendants. The facts of this case, as found by the District Judge, present a frightening picture of violence and intimidation. To better understand the questions presented a very brief outline of the area within which the acts took place is helpful.

Osborne's mines were located to the northeast of Jellico, Tennessee. The coal mined there was trucked into Jellico where it was unloaded at a coal tipple for shipment by rail to its ultimate destination.

The defendants first urge that they did not "induce or encourage" employees of an employer other than plaintiff to engage in "a concerted refusal" to compel plaintiff to bargain with U. M. W. in violation of Section 303 of the Act. They claim that the Jellico tipple was the primary situs of the labor dispute and that the activities complained of occurred at or in the vicinity thereof. Thus, any occurrences there are claimed to have been primary activity, and not secondary, so as not to be violative of Section 303. They rely on the decision of the Supreme Court in *N. L. R. B. v. International Rice Milling Co.*, 341 U. S. 665 (1951).

It was undisputed that U. M. W. had not been designated as a representative of Osborne's employees under the provisions of Title 29, U. S. C. A., § 159.

In his findings of fact relating to this issue the Trial Judge found substantially as follows: Osborne, at the time of the grievances complained of, was engaged exclusively in strip mining and its employees performed the work incidental thereto. Osborne subleased part of its mining tracts to contractors who engaged in underground mining and sold the coal extracted therefrom to Osborne. These underground mine operators had their own employees. Osborne engaged truck owners, some of whom drove their own trucks while others had employees driving, to haul the coal produced from the strip and underground mining operations to the tipple which Osborne had constructed at Jellico. There was no common ownership between Osborne and the sublessee mine operators and the truck owners, and Osborne did not control them or their employees. Osborne had only two employees at the tipple.

Previous to the time of the grievances complained of, namely, in 1951, 1952 and 1953, Osborne was engaged in strip mining near Corbin, Kentucky. A district representative of District 19 attempted to induce Osborne to sign a collective bargaining agreement with U. M. W. at that time. When this failed, a picket line was established in 1953 at Osborne's place of business in Kentucky which drastically interferred with Osborne's business and also prevented independent truckers from hauling Osborne's coal. Osborne obtained a state court injunction restraining the picketing. The action was dismissed in November, 1953 by an order which recited that counsel for District 19 had advised the District that it was unlawful under Kentucky laws to picket for the purpose of obtaining a union contract unless the Union represented a majority of the employees and that the Union wished to obey the law by withdrawing pickets until such time as it became legal.

Clifford Osborne, President of the mining company, had been pressured on more than one occasion to sign a union contract and company employees had been solicited at their

homes and at other places by the Union in an unsuccessful effort to get them to join the Union.

In 1954 Osborne secured new mining leases known as the Packard and Gatliff leases. The Packard lease comprised about 7,000 acres of land situated northeast of Jellico, Tennessee. The Gatliff lease involved 17,000 acres of land located in Whitley and Knox Counties, Kentucky, which adjoined the Packard tract on the east. Osborne started operations on its new leasehold in the early part of July, 1954. Shortly after operations commenced 20 to 30 Union men visited the strip pit of Osborne, which was the work situs of practically all of its employees, and asked the employees to join the Union. They told the employees that if they did not join the Union, they, the Union members, would return to the pit and the situation would not be peaceful.

On the morning of July 23, 1954, a riotous group of 50 to 100 men visited the Osborne tipple at Jellico. Two Union organizers, Taylor Maddox and Ed. Daniel were present. Maddox asked Osborne to sign a union contract. There was testimony to the effect that Maddox stated to Mr. Osborne that the Union members would take care of themselves and that the trucks would not dump their coal until Osborne signed the contract. While Maddox denied making this statement he did admit that he asked Osborne to sign the contract on this occasion and that he explained to Osborne why the men were there.

One unruly group attempted to stop a truck loaded with coal from entering Osborne's premises. The group blocked the path of the next truck and stopped it near the scale house. One or more of the group jerked the door of the cab of the truck and threatened the cab driver. Daniel failed to do anything to calm the men or disperse the group. Mr. Osborne requested the group to disperse and to permit the company to carry on its operations and he talked for sometime with Maddox but was unsuccessful in his appeals to get the group dispersed.

A number of other trucks came into Jellico for the purpose of unloading coal at the tipple but could not gain access thereto because of the violent attitude of the group. The drivers, including the employee drivers, parked their trucks at various places on the streets and parking lots while Mr. Osborne was carrying on his conversation with Maddox and attempting to restore order.

Neither Maddox nor Daniel made any attempt to persuade the group to disperse so that coal could be unloaded. An unsuccessful attempt was made to obtain the help of the police.

Osborne's lawyer appeared and instructed the truck drivers to take their loads of coal to the company's tipple at Faber, Kentucky. The coal had been scheduled for shipment to the Tennessee Valley Authority but was shipped from Faber on some other order.

On the following day an injunction was obtained by Osborne and some of the truck drivers in the state court at Jacksboro, Tennessee, restraining riotous activities of the group of men. The suit was dismissed on December 19, 1956, after the Packard and Gatliff leases were surrendered by Osborne.

On August 2, 1954, as trucks of coal entered Jellico they were stopped by groups of men in the streets and the drivers were arrested by a deputy sheriff named Spencer Douglas, who was a member of the Union, on warrants charging them with operating trucks with improper equipment and without a Tennessee license. The charges against the drivers were dismissed by the General Sessions Court of Campbell County upon the statement of the prosecution witness that he was told by some one to swear out a warrant. The District Court said that this was a serious abuse of legal process inspired by Union activity. For a number of months thereafter crowds of men assembled around the tipple premises interferring with truck drivers as they

came into the tipple. It was found that these activities interfered with plans of Osborne to secure a large number of subleases for underground operations on the new leasehold.

U. M. W. was attempting at the same time to organize other mines in the Jellico area. Its organizer Ed. Daniel sought to obtain a contract from the Maiden mine, 4 miles from Jellico. A picket line was placed at the pit. Daniel was observed driving from Jellico to the pit. A truck driver was hauling coal from the pit when two men in a car tried to stop him and fired pistol shots into his truck as he passed. The damage to the truck was repaired at Jellico where Osborne's drivers learned of the mine shooting incident.

On April 6, 1955, a group of two or three hundred men assembled at Jellico. They stopped trucks carrying coal into Jellico and dumped the coal in the streets and on the parking lots. They forced one of the employee drivers hauling coal to Osborne to dump his truck and the truck driver was assaulted by one or more of the riotous group. Another driver hauling Osborne coal was chased on foot through the Osborne tipple and his truck was dumped on a nearby lot by the mob. One or more members of the group forced an elderly truck driver to unload coal in the street by hand, although the truck was equipped with a mechanical dumping mechanism. Spencer Douglas who was a member of the group on July 23, 1954, was also a member of this group.

The group left Jellico and visited Newcomb, Tennessee, about four miles away, the site of the Boots and Cox Mine, also a non-union operation. Boots, a man of 65 years of age was severely beaten by the mob. Cox was also beaten and kicked. The mine was closed for about a week, when the operators called Daniel who came to their office and a contract was signed. The mine was reopened and Boots and Cox had no more trouble.

In February or March, 1955, two men went to the strip pit of Frost & Parrish near Newcomb and demanded that they sign a union contract. One of the men was armed. Mr. Frost told them he would talk only with Daniel. Shortly thereafter Daniel appeared and asked Frost if he wanted to sign a contract. Frost refused. On April 6th the same mob that had visited Jellico and the Boots and Cox mine visited the Frost & Parrish mine and assaulted both Frost and Parrish. They also attacked employees in the mine, leaving them prostrate in a muddy pool at the bottom of the pit.

Groups of men came into Jellico on April 7, 1955. The Board of Aldermen of Jellico passed a resolution requesting assistance from the Governor of Tennessee.

The mob visited the non-union Van Huss mine, between La Follette and Jellico, on April 11, 1955 where they attacked Van Huss and buried him under a pile of dirt. They forced his employees to beat and curse him. His clothes were stripped off and he was whipped and then thrown into a pool of water where he was doused up and down. One of his employees was treated in the same manner. Several months previously Daniel had tried to get Van Huss to sign a union contract. Lowe, a member of the mob, referred to Daniel.

As Clifford Osborne was driving to Jellico on April 13th, he saw a long caravan of cars approaching. He turned around and the cars at the head of the caravan chased him down the Cave Gap road into a hollow where they lost him. The men in the caravan searched the pit for Osborne and found no men working there, as they had fled into the woods.

Daniel, Maddox and another Union representative named Pass made union speeches in Jellico on April 11th. They urged their listeners to keep scab coal out of Jellico.

On April 28, 1955 several hundred men returned to Jellico and visited the place where the trucks that haul

Osborne coal were kept overnight. They stood around pointing their fingers and evidencing a belligerent attitude toward the truck drivers assembled at the State Line Service Station. Daniel was seen talking to a group of men a short distance away. The men got in their car and proceeded to parade in front of the service station, driving their cars back and forth in an obvious effort to intimidate the onlooking truck drivers.

Groups of men continued to occupy the streets and sidewalks in front of the Osborne tipple during the ensuing months of 1955, until winter came. These groups would sometimes form picket lines, point their fingers, block the driveway and display hostility toward the truck drivers.

During April, 1955 and for months thereafter large numbers of nails were found on roads used by trucks hauling Osborne coal which roads were also used by miners going to the underground mines and strip pits. The District Judge found that the scattering of nails was inspired by union activities.

In the fall of 1955 and spring of 1956 other efforts were made to intimidate the truck drivers and stripping crews. These included the burning of haystacks at night in the plain sight of the stripping crew, shooting at a lone guard at the stripping pits, displaying of mysterious lights in the woods around the pits.

The Court concluded that the acts of violence and intimidation were intended to and did create a reign of terror in the Jellico area, in order to promote the U. M. W. organizing campaign; that said acts were intended to and did induce and encourage employees of employers (other than Osborne) to engage in a concerted refusal to mine and haul coal, the objective being to force Osborne to bargain with U. M. W. as the representative of its employees.

While the form of persuasion adopted in this case was not conventional, it is clear that the words of the statute (29 U. S. C. A., § 187a) "induce" and "encourage" include every form of influence and persuasion whether by appeals to reason or coercion with force and violence. *International Brotherhood of Electrical Workers* v. *N. L. R. B.*, 341 U. S. 694 (1951).

The activities of the defendants were not directed against a single neutral party as in *N. L. R. B.* v. *International Rice Milling Co.*, 341 U. S. 665 (1951), but to many neutral employers and their employees. They were designed to and did effect a concerted action on the part of the employees and neutral employers not to mine or haul coal for Osborne. Cf. *Schauffler* v. *United Association of Journeymen*, 230 F. 2d 572, 574 (C. A. 3, 1956); *N. L. R. B.* v. *Denver Building & Construction Trades Council*, 193 F. 2d 421 (C. A. 10, 1952).

All but two of Osborne's employees were employed in the strip mines. It would seem clear that the labor dispute in this case involved the mining employees of Osborne and that the situs of the dispute was the pit where the miners were working and not at the coal tipple in Jellico, Tennessee, where only two of Osborne's employees were working.

In any event, the trial court found that U. M. W. did not confine its activities against the secondary employees to the tipple, or any picket line at those premises, but were spread throughout the area wherever the secondary employees could be found. The statute proscribes certain activities irrespective of where they take place. Even in picketing at the premises of a primary employer the union must exercise its rights consistent with the right of neutral employers to remain uninvolved in the dispute. *Retail Fruit & Vegetable Clerks Union* v. *N. L. R. B.*, 249 F. 2d 591 (C. A. 9, 1957); *United Brick & Clay Workers* v. *Deena Art Ware, Inc.*, 198 F. 2d 637, 643 (C. A. 6, 1952).

In each of his findings of fact the trial court cited references to the record in support thereof.

This Court is bound by the findings of fact of the trial court unless they are clearly erroneous and it appears that the court has made a mistake. *Rule 52a, Federal Rules of Civil Procedure; McAllister* v. *United States*, 348 U. S. 19, 20 (1954); *United States* v. *U. S. Gypsum Co.*, 333 U. S. 364, 395 (1948).

A review of the evidence with respect to this issue convinces us that the findings of fact of the trial court were not clearly erroneous.

U. M. W. contends that neither the truck drivers nor the sublessee mine operators were "neutral" employees within the meaning of the Act; that their relationship was not that of at arms-length which usually exists between employers and there was not a complete interdependence of operations. It relies chiefly on *Local 24, International Brotherhood of Teamsters* v. *N. L. R. B.*, 266 F. 2d 675 (C. A., D. C., 1959).

This is essentially a question of fact. As before stated, the trial court found that Osborne did not control either the secondary employers or their employees. The truck owners did not haul exclusively for Osborne.

While prior to the Taft-Hartley amendments of 1947, the employees of the lessee mine operators and truckers would have been considered as employees of Osborne (In the Matter of A. M. Greene, 49 N. L. R. B. 146), the effect of the amendments is not to so regard the employees of independent contractors. 29 U. S. C. A., § 152 (3).

In the *Teamsters* case, supra, relied upon by defendants, the truck owners' (lessors') employees were deemed to be employees of the transportation company (lessee) because of the control exercised over them by the latter. The transportation company (lessee) was not an independent contractor. As stated by the court:

> The many tiny strands of Ace (lessee) control over these drivers cannot be extricated from the total fabric of mutual obligation. Those strands are clearly part of the pattern of the employer-employee relationship.

In the case at bar the strands of control referred to in the *Teamsters* case were not present, and the evidence supports the findings of the trial judge as to the existence of the independent contractor relationship.

Defendants assert that the District Court did not have jurisdiction to determine whether the evidence material to the federal cause of action also established a violation of the common law of Tennessee.

The case of *United Mine Workers of America* v. *Meadow Creek Coal Co.*, 263 F. 2d 52 (C. A. 6, 1959), cert. denied 359 U. S. 1013 (1959), supports the jurisdiction of the District Court to consider and determine the common law claim where it is joined with the federal claim and is supported by the same evidence. *Hum* v. *Oursler*, 289 U. S. 238 (1933). We are asked to reconsider our decision in *Meadow Creek*. We feel this case was correctly decided. Judge Martin in his opinion said:

> . . . We think this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action.

The fact that the activities of U. M. W. were directed against both primary and secondary employers and employees does not oust the court of jurisdiction. The acts of the Unions were so interrelated that except in a very few instances it would be virtually impossible to separate those directed against a primary as distinguished from a secondary party. The primary activities could certainly not be regarded as an efficient intervening cause which would operate to relieve the defendants of responsibility

for the full damage caused by their violation of federal law."

Defendants assert that the District Judge erred in admitting evidence of incidents taking place at other mines to establish the responsibility of defendants for incidents occurring at Osborne's operations. They cite *Massengill v. Shadden*, 48 Tenn. 357, as illustrative of the rule contended for. In that case, the Court held that evidence to the effect that the defendant had taken two horses from somebody else on the night in question did not establish that he had taken plaintiff's mare. In our case the factual situation is somewhat different.

The incidents concerning the other mines were in the area of Osborne's operations and were, as found by the trial court, in connection with U. M. W. efforts to organize all of the mines in the Jellico area. They were taking place at or about the time of the incidents directed against Osborne and the secondary employers and employees. In fact, in some instances, the same groups which committed acts of violence at Jellico left and committed acts of violence against other mine owners in the area.

Due to the close proximity of all of these mines to the Jellico tipple there can be no question that not only Osborne's employees, but also the secondary employers and employees knew all about the incidents occurring at the other mines. They might reasonably regard these incidents as an indication of what might happen to themselves if they persisted in mining or hauling coal for Osborne. Cf. *N. L. R. B. v. Local 140, United Furniture Workers*, 233 F. 2d 539 (C. A. 2, 1956); *N. L. R. B. v. United Mine Workers of America*, 195 F. 2d 961 (C. A. 6, 1952). The incidents with respect to other mines constituted a form of influence and persuasion coming within the scope of *International Brotherhood of Electrical Workers v. N. L. R. B.*, 341 U. S. 694 (1951), and in our judgment the evidence was admissible.

We are of the opinion, however, that even without the evidence of the incidents at other mines, the judgments are supported by sufficient evidence.

We think the evidence supports the Findings and Conclusions of the District Judge that the defendants were responsible under the common law doctrine of respondeat superior for the acts of their agents and servants. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656 (1954); *United Mine Workers* v. *Meadow Creek Coal Co.*, supra; *Lewis* v. *Benedict Coal Corp.*, 259 F. 2d 346, 352 (C. A. 6, 1958); *Brumlow* v. *Chattanooga Speedway & Motordrome Co.*, 138 Tenn. 534 (1917).

The Court found that the group creating the reign of terror in the Jellico area was furthering the organizational efforts and interests of the International Union; that the Union organizers, Daniel and Maddox, were not only direct employees of District No. 19, but in fact and in law were representatives of the International; that Daniel and Maddox worked with the groups of men who created the reign of terror in the Jellico area and in so doing were furthering the interests of the International; that the defendants with full knowledge of the facts took advantage of these acts of violence to get new contracts and were benefited by the dues of new members; that the International encouraged and promoted the organizational efforts of District No. 19 and its representatives and members and advanced to it large sums of money during the period in question for these purposes; that it came to the aid of members of the mob and defended them in the criminal cases resulting from the mob's activities.

The Court also determined from the evidence that District No. 19 was not a separate autonomous body but a mere agent of the International Union. Cf. *United Mine Workers of America* v. *Meadow Creek Coal Co.*, supra.

The evidence, in our judgment, was sufficient to establish liability on the part of the defendants for destruc-

tion of Osborne's business. The rule in *United Brotherhood of Carpenters & Joiners* v. *U. S.*, 330 U. S. 395 (1947), which interpreted Section 6 of the Norris-LaGuardia Act (29 U. S. C., § 106), does not immunize the unions from the activities shown here. There the court recognized that the grant of authority to an officer of a union to do certain things may well be sufficient to make the union liable and that "the custom or traditional practice of a union can also be a source of actual authorization of an officer to act for and bind the union." id., p. 410.

The remaining question in the Osborne appeals relates to damages. The statute provides for the recovery of damages by whoever is injured by reason of the violation of Section 303a. 29 U. S. C. A., § 187 (b). Osborne claims that the award of compensatory damages was inadequate and asks this Court to increase the award. U. M. W. asserts that the award was excessive and that Osborne should recover only nominal damages or at least that a remittitur be ordered.

The trial judge awarded Osborne $165,000 for compensatory damages. He made findings of fact with respect to the following special items:

| | |
|---|---|
| Damages paid T. V. A. for failure to fulfill contract | $ 16,000.00 |
| Cancellation of Gatliff leases | 2,500.00 |
| Cancellation of Packard leases | 500.00 |
| Minimum royalty—Gatliff lease (1955) | 15,000.00 |
| Minimum royalty—Gatliff lease (1956) | 12,413.60 |
| Operating loss (1955) | 9,454.03 |
| " " (1956) | 39,365.52 |
| " " (1957) | 14,234.09 |
| " " (1958—9 months) | 5,657.87 |
| | $109,725.11 |

Subtracting the total of the special damages from the award of $165,000 leaves a figure of $55,274.89 which can

be said to be attributable to loss of profits during the five year period from 1955 to 1959.

To support the award for loss of profits the trial judge found that Osborne had an established business and that its net profits for the four year period from 1950 through 1953 for income tax purposes averaged $23,666.39 per year. The Court further found that except for the interference by defendants its profits for the five year period (1955-1959) would have been as great as in the preceding years (1954 was not considered a representative year).

Defendants attack the award of special damages as well as the profits. They claim that the evidence does not support the findings as to the special damages; that the Gatliff mine was not worked until 1956; that the failure to perform the T. V. A. contract was not attributable entirely to labor troubles; that Osborne had never produced sufficient coal to fulfill the T. V. A. contract prior to the labor trouble; that the workers employed by Osborne and the sublessees were paid substandard wages and that any contract entered into after November 25, 1944 would be subject to the Walsh-Healy Act (41 U. S. C., § 35 et seq.) which increased wages and reduced Osborne's profit thereby having the effect of removing T. V. A. as a possible customer; that the award of profits was too speculative; that Osborne's losses during the period in question were not entirely attributable to the labor dispute.

Osborne in its appeal claims that the trial court, because of its findings of fact, should have allowed it more compensatory damages. It asserts that the trial court should have increased its profits by eliminating expense deductions for depletion, depreciation, and bonus payments to officers and employees. These deductions were taken on its income tax returns and were apparently allowed by the Government. Osborne asks this Court to increase the award of compensatory damages.

The findings of the trial judge indicate the factors he took into account in allowing compensatory damages. He

resolved many disputed issues of fact. It has not been demonstrated to us that the Court made any mistake in his findings of fact relating to damages or that he applied the wrong rule of law. We think that under all the facts and circumstances of the case the Court was justified in making the award which he did, and we are not disposed to disturb it. The award of punitive damages was entirely within his discretion to make under the common law of Tennessee. *United Mine Workers* v. *Meadow Creek Coal Co.*, supra.

In a tort action involving unliquidated damages the amount of which cannot be determined to a mathematical certainty, it is not the function of the Court of Appeals to retry the case or fix the amount of damages according to its notions, but rather to examine the record to determine whether there is substantial credible evidence to support the findings of the trial court. *Atlantic Refining Co.* v. *Evans*, 251 F. 2d 277 (C. A. 5, 1958). We would not be "justified in modifying them unless satisfied they are outside the range of permissible or sane judgment." *Adventures in Good Eating, Inc.* v. *Best Places to Eat, Inc.*, 131 F. 2d 809 (C. A. 7, 1942).

In *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555 (1931), the Court said:

> Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness

and precision that would be possible if the case, which he alone is responsible for making, were otherwise.

Profits are recoverable where there is an established business and they can be proven with reasonable certainty. *Baumer v. Franklin Distillery Co., Inc.*, 135 F. 2d 384 (C. A. 6, 1943); *Roseland v. Phister Mfg. Co.*, 125 F. 2d 417, 420 (C. A. 7, 1942); *Jennings v. Lamb*, 201 Tenn. 1 (1956); *Hogan v. Trust Co.*, 124 Tenn. 93 (1910).

In the appeal filed in the *Love & Amos* case, No. 13,874, U. M. W. raised the important question as to whether the damages claimed by Love & Amos, not a party to the labor dispute, are too remote to be recovered under the Act, 29 U. S. C. A., § 187 (A) (1) and (2) and § 187 (b).

The labor dispute, in this case, it will be recalled was solely between U. M. W. and Osborne. U. M. W. was engaged in efforts to organize Osborne's employees and in connection therewith violated the Act by activities directed against secondary employers and employees for which we have held it must respond in substantial damages to Osborne.

Love & Amos was a sales agency and the agent of Osborne. It was not a coal producer or operator. It had acted not only to procure leases for Osborne, but also sold the coal which Osborne mined for which it was paid a commission of 25¢ a ton. The agency agreement between Love & Amos and Osborne was verbal. It claims that in consequence of the violation of the Act by U. M. W. Osborne was unable to mine and transport the coal on orders procured by Love & Amos and it is, therefore, entitled to the commissions which it would have earned if the orders had been filled. The District Judge agreed.

Love & Amos had no employees whom U. M. W. was attempting to organize, or for whom it was endeavoring to secure a collective bargaining agreement; U. M. W. did not

induce or encourage any of Love & Amos' employees to strike in order to compel Osborne to bargain with U. M. W.

The Act provides:

> Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States . . . 29 U. S. C. A., § 187 (b).

No case interpreting this section on this point has been cited to the Court.

In *Deena Products Co. v. United Brick & Clay Workers of America*, 195 F. 2d 612 (C. A. 6, 1952), in a per curiam opinion, which dismissed an appeal because it was not timely filed, we were of the view that a parent corporation could not recover damages under the Act where its subsidiary was the primary employer and was involved in a dispute with a union which developed into a secondary boycott. There was no contract between the parent and subsidiary. In the present case there was a contract with Love & Amos.

In *United Brick & Clay Workers v. Deena Art Ware, Inc.*, 198 F. 2d 637 (C. A. 6, 1952), we held that the Act conferred a right of action upon the primary employer as well as a neutral employer who was damaged by the prohibited boycott.

Judge Miller, who wrote the opinion for the Court, pointed out that the construction given to analogous provisions of the Sherman Anti-Trust Act (15 U. S. C. A. 1-7) was pertinent citing *Chattanooga Foundry & Pipe Workers v. Atlanta*, 203 U. S. 390 (1906), and other cases.

Defendants relied on cases interpreting the anti-trust laws in which damages claimed by third parties were deemed too remote to permit recovery. *Melrose Realty Co., Inc. v. Loew's, Inc.*, 234 F. 2d 548 (C. A. 3, 1956),

certiorari denied 352 U. S. 518 (non-operating owner-lessor of motion picture theatre with percentage lease). This case followed the decision in *Harrison* v. *Paramount Pictures*, 115 F. Supp. 312 (D. C. E. D. Pa., 1953), aff'd 211 F. 2d 405 (C. A. 3, 1954). *See also*: *Martens* v. *Barrett*, 245 F. 2d 844 (C. A. 5, 1957) (sole stockholders of a corporation); *Productive Inventions, Inc.* v. *Trico Products Corp.*, 224 F. 2d 678 (C. A. 2, 1955), certiorari denied 350 U. S. 936 (patentee who had granted exclusive license to another); *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, 147 F. Supp. 907 (D. C. Mass. 1956) (person having profitable relationship with party directly affected by violation of anti-trust laws).

In Trico Products, supra, the court said:

> Those harmed only incidentally by anti-trust violations have no standing to sue for treble damages; only those at whom the violation is directly aimed or who have been directly harmed may recover . . . Shareholders and officers of corporations as well as creditors and landlords have been held not to have standing to sue for treble damages . . . Undoubtedly, such persons suffer some financial loss when anti-trust violations are directed against the corporations in which they have an interest. But not every financial loss due to an anti-trust violation, however remote, gives a right of action. id., 679.

Love & Amos rely on the cases of *Congress Building Corporation* v. *Loews, Inc.*, 246 F. 2d 587 (C. A. 7, 1957), and *Steiner* v. *20th Century Fox Film Corp.*, 232 F. 2d 190 (C. A. 9, 1956), in which recovery was allowed to owner-lessors. It also relies on *Chattanooga Foundry & Pipe Workers* v. *Atlanta*, 203 U. S. 390 (1906), where a purchaser of pipe directly affected by a conspiracy between pipe producers was permitted to recover.

In *Congress Building* and *Steiner* the lessees were parties to the conspiracy. In *Chattanooga* the conspiracy

was directed at purchasers and plaintiff was one of the objects thereof.

In the present case, unlike the cited cases, Osborne was not a party to any conspiracy nor is there any claim that Osborne committed any wrong of any kind against Love & Amos. The theory of the complaint of Love & Amos against U. M. W. is that U. M. W. by its secondary boycotts destroyed Osborne's business and in consequence thereof Love & Amos were deprived of commissions which it otherwise would have earned under its contract with Osborne. In other words, U. M. W.'s violation of the federal law destroyed Osborne and Love & Amos were injured because of its contractual relations with Osborne.

For the wrongs which have been committed against Osborne, it has recovered compensation for all the damage to which it was legally entitled. It has been fully compensated for its actual losses and for the profits which it would have made. In addition, it has received an award for punitive damages.

Love & Amos contend that some of the activities of U. M. W. were directed at it; that the official journal of U. M. W., which was required reading at union meetings, contained critical articles with respect to the practice of T. V. A. in purchasing what it called non-union coal; that the malice which U. M. W. had toward Osborne was intensified in its attitude toward Love & Amos because of that concerns long relationship as the chief source of coal for T. V. A.; that statements were made on the picket line or on placards carried by the pickets which mentioned Love & Amos or which made disparaging remarks concerning Mr. Amos, individually, who was an officer of Love & Amos and also a principal of Osborne.

The unions explain that they were interested in the wages and working conditions of the miners. They were conducting an organizational campaign. They had the right of free speech which included the right to criticize an

agency of Government for awarding public contracts at prices which they claim did not permit the payment of fair wages to miners and resulted in substandard working conditions. They claim they had the right to display signs or placards so long as they told the truth.

In any event, it is not for these acts that Love & Amos seek recovery here. As heretofore pointed out Love & Amos' cause of action is based upon the destruction of Osborne's business by the unlawful activities of the unions and the damage it claims to have suffered is because of its contractual relationship with Osborne. This damage is incidental and too remote for recovery under federal law.

If Love & Amos were damaged as a result of any activities of defendants directed at it, an adequate remedy exists under state law. This is not the type of case contemplated by the Labor Management Act of 1947.

Jurisdiction cannot be sustained on the ground that, Love & Amos having failed in their federal cause of action, the District Court may nevertheless retain the case and administer the cause of action under the common law of the state. Cf. *Hum* v. *Oursler*, 289 U. S. 238 (1933); *Baltimore Steamship Co.* v. *Phillips*, 274 U. S. 316 (1927); *United Mine Workers of America* v. *Meadow Creek Coal Co.*, 263 F. 2d 52 (C. A. 6, 1959).

The failure of Love & Amos to recover here is not attributable to lack of supporting evidence. It was because it never had and could not assert any federally recognized cause of action or ground for recovery. Consequently, the analogy in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469 (1940), applies. *Hunt* v. *Crumboch*, 325 U. S. 821, 826 (1944). The District Court had no jurisdiction of the Love & Amos action for violation of the common law of Tennessee.

The only question raised by Love & Amos in Case No. 13,873 is that the amount of the judgment in its favor

was inadequate. Since we have reversed its judgment in Case No. 13,874, this disposes of the question of damages.

It follows that the judgment in Case No. 13,872 is affirmed; judgment in Case No. 13,871 is affirmed; judgment in Case No. 13,874 is reversed and the cause is remanded to the District Court with instructions to dismiss the complaint and the appeal in Case No. 13,873 is dismissed.

## Judgment of Court of Appeals.

(Filed June 7, 1960.)

Appeal from the United States District Court for the Eastern District of Tennessee.

This Cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Tennessee, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

## APPENDIX III.

Section 12 of H. R. 3020 as Found in Legislative History of the Labor Management Relations Act, Vol. 1, pp. 204-207:

"Sec. 12. (a) The following activities when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place; or picketing an employer's place of business in numbers or in a manner otherwise than is reasonably required to give notice of the existence of a labor dispute at such place of business; or picketing or besetting the home of any individual in connection with any labor dispute.

"(2) Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer.

"(3) Calling, authorizing, engaging in, or assisting

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises;

"(B) any strike or other concerted interference with an employer's operations, an object of which is to

compel an employer to accede to featherbedding practices;

"(C) any strike or other concerted interference with an employer's operations, an object of which is (i) to compel an employer to recognize for collective bargaining a representative not certified under section 9 as the representative of the employees, or (ii) to remedy practices for which an administrative remedy is available under this Act, or (iii) to compel an employer to violate any law or any regulation, order, or direction issued pursuant to any law.

"(4) Any conspiracy, collusion, or common arrangements between competing employers to fix or agree to terms or proposed terms of employment of their employees, or to subject such terms or proposed terms of employment to common control or approval, not permitted as to their employees, or as to the representatives of their employees, with respect to the collective bargaining, concerted activities, or terms of collective bargains or arrangements of such employees.

"(b) Any person injured in his business, person, or property by an unlawful concerted activity affecting commerce may sue the person or persons responsible therefor in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and may recover the damages sustained by him as a result of such unlawful concerted activity, together with the costs of the suit, including a reasonable attorney's fee.

"(c) No provision of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall have any application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful.

"(d) A person who is found to have engaged in any activity herein defined as an unlawful concerted activity shall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice under section 8 (b) or 8 (c).

"(e) Except as specifically provided in this section, nothing in this Act shall be construed to diminish the right of employees to strike or to engage in other lawful concerted activities. No provision of this Act, and no order of any court issued hereunder, shall be construed to require any individual to perform labor or service without his consent."

## APPENDIX IV.

### Norris-LaGuardia Act.

29 U. S. C. 106, 47 Stat. 71: **Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.**

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

### Labor Management Relations Act, 1947.

29 U. S. C. 187, 61 Stat. 158: **Boycotts and other unlawful combinations; right to sue; jurisdiction; limitations; damages.**

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any

other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under sub-chapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

29 U. S. C. 185, 61 Stat. 156 (c): **Suits by and against labor organizations—Venue, amount, and citizenship.**

* * * * * * *

(c) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 U. S. C. 152, 61 Stat. 137: **Definitions.**

When used in this subchapter —

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(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.